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Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DEVIN TEAGUE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

HAPPY EXPRESS, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2203408
*[Assigned to Hon. David Cohn, Dept S26, for
all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing
Date: September 19, 2023
Time: 9:00 a.m.
Dept: S26

Complaint filed: February 14, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 22 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history, which followed extensive litigation, summary adjudication and writs
18 to the CA Supreme Court against a Fortune 50 company (Garcia v. Macy’s, San Bernardino
19 Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$420,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
26 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
27 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
28 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that

only 5% of lawyers receive.

ADEQUACY OF THE SETTLEMENT

7. The Class, as conditionally certified by this Court, consists of 155 current and former non-exempt employees employed by Defendant in California at any time during the Class Period of October 4, 2017, through March 9, 2023 (the “Class Members”).

8. As set forth in the Declaration of the Settlement Administrator, the Net Settlement Amount is approximately \$90,992.46, after the deductions set forth in the chart below:

<i>Gross Settlement Amount</i>	\$ 200,000.00
Attorneys’ Fees (1/3)	\$ 66,666.67
Litigation Costs	\$ 8,840.87
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 20,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 90,992.46

9. The process of mailing the Class Notice was successful, as 100% of the Notices were deemed deliverable by the Settlement Administrator.

10. The response from the Class Members was overwhelmingly positive, as no Class Members objected or opted-out of the Settlement.

11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is reasonable in light of Defendant’s financial condition and the necessary payment plan.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties’ arms’ length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 100% of the Class elected to participate and no objections were submitted, the presumption of fairness is justified.

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and possible appeals. As set forth in Plaintiff’s motion for preliminary approval and the declarations submitted in support thereof, Defendants contested Plaintiff’s claims, and Plaintiff faced real

1 challenges moving forward and obtaining a recovery in this matter. Nonetheless, the Parties
2 concluded that further litigation would be protracted and expensive, and that it is desirable that
3 the action be fully and finally settled in the manner and upon the terms and conditions set forth in
4 the Settlement Agreement in order to limit further expense, inconvenience and distraction, to
5 dispose of burdensome and protracted litigation, and to permit the operation of Defendants'
6 business without further expensive litigation and the distraction and diversion of its personnel
7 with respect to matters at issue. All parties took into account the uncertainty of risks inherent in
8 any litigation, especially in complex cases such as this case. The Parties determined that it is
9 desirable and beneficial to both the Class and Defendants that this case be settled. Risks on both
10 sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the
11 Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted
12 recovery in litigation.

13 **ADEQUACY OF COUNSEL AND**
14 **REASONABLENESS OF REQUESTED FEE AND COST AWARDS**

15 14. As set forth above, I have handled well over 250 class and representative actions,
16 have been appointed as class counsel and have successfully resolved approximately half of those
17 actions, and many others remain pending and will successfully resolve in the future while
18 recovering in excess of \$250 million dollars for my clients and Class Members. This is
19 substantially better than average accordingly to Mayer Brown LLP's study entitled, An
20 Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir.
21 2014) 753 F.3d 918, which found that only one-third of class actions are successful, compared to
22 two-thirds that are defeated and result in no payment to the class members.¹

23 15. When this case was taken on a contingency fee basis, with my firm agreeing to
24 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
25 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
26 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

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28

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 16. It has been my experience that the benchmark for attorney fee awards in
2 California state cases is one-third of a common settlement fund, which the CA Supreme Court
3 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
4 Counsel is seeking a fee of \$66,666.67, which is one-third of the Settlement Amount.

5 17. There are several additional factors why I believe that the Court should award
6 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
7 resulted in a common fund settlement amount of \$200,000. This is a good result in light of the
8 disputed nature of the claims alleged and Defendant's financial condition. This result was
9 achieved by the work and success of my office, who negotiated the settlement after necessary
10 preparation, investigation, mediation, and work thereafter.

11 18. Second, Plaintiff faced significant risks going forward with the litigation. As
12 discussed in the motion for preliminary approval, Defendants raised various defenses and there
13 was a risk that Defendants may cease operations. Accordingly, Plaintiff faced risky issues going
14 forward with this litigation.

15 19. Third, Class Counsel are experienced class action litigators. This experience and
16 expertise, combined with the high quality of work performed in this case, resulted in the
17 settlement achieved in this case.

18 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
19 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
20 substantial amount of time, money, and resources, and have done so since the inception of this
21 case without any payment or compensation. If Plaintiff had lost this case, we would have
22 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
23 my office, which is a small firm.

24 21. Fifth, the request for attorney's fees in the amount of one-third of the common
25 fund falls well within the norms accepted by state and federal courts in California in comparable
26 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
27 recovery under the common fund doctrine was approved by the California Supreme Court in
28 *Laffitte v. Robert Half*.

1 22. For all of the above reasons, a common fund fee award here in the amount of one-
2 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

3 23. At my office, this case was primarily handled by Kristina Carlson, an associate
4 within our office, while I performed the role of the supervising attorney. As set forth in his
5 declaration, Ms. Carlson works exclusively with me on employment law matters and has been in
6 practice for 9 years. She bills at the hourly rate of \$550/hour. I have been in practice for 22
7 years, with most of those years handling complex litigation and for over the last 15 years, my
8 practice has almost entirely consisted of handling class action wage and hour matters. My billing
9 rate is \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who
10 handle complex class action litigation, if not somewhat lower.

11 24. The hourly rates above are comparable to those of other attorneys with equal or
12 similar experience, if not somewhat lower (i.e., the Laffey Matrix at *www.laffeymatrix.com*
13 indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year
14 attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer
15 Real Rate Report (“Real Rate Report”), provides directly applicable information in this regard.
16 The Real Rate Report is based on an enormous and statistically significant compilation of data.
17 For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours
18 billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees
19 billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for
20 partners and associates in major metropolitan areas. In 2018, for the southern California area,
21 which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report
22 states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995
23 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is
24 \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information
25 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
26 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
27 fees billed by law firms.

25. The table below includes a summary of the hours worked, plus an estimated 30 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the administrator and defense counsel over a two year period covering the payment plan. The total lodestar for my firm is approximately \$119,885 through the conclusion of this matter, as shown in the chart below:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (22 Years)	\$775	52²	\$40,300
Kristina Carlson <i>Associate</i> (9 Years)	\$550	144.7	\$79,585
Grand Total for All Attorneys			\$119,885

26. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendants do not oppose this fee request.

27. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, mediator fees, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$20,000 in costs. Through final approval, my office incurred \$8,840.87 in litigation costs (see Exhibit "B" attached hereto). The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendants do not oppose this request for costs.

REASONABLENESS OF REQUESTED SERVICE AWARDS

28. I also believe that the service award of \$7,500 for Plaintiff is fair and warranted for the reasons outlined in his declarations and in the motion. He came forward and worked

² Includes an estimated 10 hours of additional work preparing for and attending the hearing, as well as 20 hours in anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require considerable more work with counsel, administrator, and Class Members.

1 directly with my office in analyzing the claims and documents, and providing valuable
2 information. (See his declaration for supporting information.) Indeed, his participation was an
3 essential element of Defendants' desire to mediate and of the pre and post mediation analysis
4 that allowed Class Counsel to settle the case. Of course, he also took on various risks, including
5 the risk that he could have been ordered to pay Defendants' costs if he lost and the risk of
6 retaliation and being black-balled in the industry. Finally, Defendants do not oppose the
7 requested service award.

8 SUBMISSION TO THE LWDA

9 29. The Motion and declarations, including the Settlement Agreement, have
10 concurrently been submitted to the LWDA. (See Exhibit "C").

11 EXHIBITS AND CONCLUSION

12 30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
13 "A."

14 31. Attached hereto as Exhibit "B" is a true and correct copy of an itemized statement
15 of my firm's litigation costs.

16 32. The LWDA's confirmation of receipt of this Motion and Declaration is attached
17 hereto as Exhibit "C."

18 33. For the foregoing reasons, it is respectfully requested that the Court grant final
19 approval of the settlement as being fair, reasonable, and in the best interest of the class, and
20 approve the requested attorneys' fees, costs, and service award.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed on August 25, 2023, at Riverside, California.

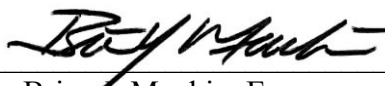
23
24 By: 
25 Brian J. Mankin, Esq.
26
27
28

EXHIBIT “A”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

DEVIN TEAGUE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

HAPPY EXPRESS, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2203408
*[Assigned to Hon. Judge David Cohn, Dept.
S26 for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint filed: 2/14/2022

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Devin Teague, individually and on behalf of all others similarly situated, and
3 on behalf of the State of California, and Defendants Happy Express, Inc. and Andrey Oganessian
4 and is approved by their respective counsel of record, subject to the terms and conditions hereof
5 and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Devin Teague v.*
8 *Happy Express, Inc., et al.*, Superior Court of California, County of San Bernardino, Case No.
9 CIVSB2203408.

10 2. "Administrator" means and refers to Phoenix Class Action Administration
11 Solutions, the third-party class action settlement administrator agreed to by the Parties, that will
12 provide the Notice to the Class Members and distribute the settlement amounts as described in
13 this Agreement.

14 3. "Administration Costs" means the costs payable from the Settlement Amount to
15 the Administrator for administering this Settlement, including, but not limited to, printing,
16 distributing, and tracking documents for this Settlement, tax reporting, and deposit of the
17 employee and employer share of payroll taxes, unclaimed property due diligence, reporting and
18 remittance obligations, distributing the Settlement Amount, and providing necessary reports and
19 declarations, as requested by the Parties. The Administration Costs shall be paid from the
20 Settlement Amount, including, if necessary, any such costs in excess of the amount represented
21 by the Administrator as being the maximum costs necessary to administer the Settlement.

22 4. "Aggrieved Employee(s)" means all current and former California resident truck
23 drivers who performed services for Defendants in California and who were classified as
24 independent contractors at any time during the PAGA Period.

25 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
26 Action and PAGA Settlement Agreement and Release of Claims.

27 6. "Class" means all current and former California resident truck drivers who
28 performed services for Defendants in California and who were classified as independent

contractors at any time during the Class Period.

7. “Class Member(s)” refers to individual members of the Class.

8. “Class Counsel” refers to Brian Mankin and Kristina Bui Carlson of Lauby, Mankin & Lauby LLP.

9. “Class Data” means a complete list that Defendants will diligently and in good faith compile from their records and provide to the Administrator on one spreadsheet which shall include, for each Class Member, the individual’s full name; last known address; Social Security Number; total Weeks Worked during the PAGA Period and the Class Period.

10. “Class Period” is deemed to be any time during the period of February 14, 2018, through January 30, 2023.

11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Devin Teague.

12. “Complaint” refers to the operative class and PAGA representative action First Amended Complaint filed in the San Bernardino Superior Court on April 21, 2022.

13. “Court” (or “Judge”) means the California Superior Court, County of San Bernardino.

14. “Defendants” means and refers to Happy Express, Inc. and Andrey Oganessian.

15. “Defendants’ Counsel” or “Defense Counsel” means and refers to Landegger Verano & Davis ALC.

16. “Effective Date” means the latest of the following dates: (i) if no Class Member timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under Code of Civil Procedure § 663, then the date of the Court’s Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class Member intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, then the date of final resolution of that appeal or other collateral attack (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

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1 17. “Escalator Clause:” Defendants represent that there are approximately
2 approximately 58 eligible Class Members as of December 1, 2022. The 58 approximate Class
3 Members collectively worked a total of approximately 2,189 Workweeks through December 1,
4 2022. Defendants have represented that it has since changed its employment practice. In the
5 event that the total Workweeks (as contained in the Class Data) exceed 2,189 by more than 20%,
6 the Gross Settlement Amount will increase proportionally based on the number of workweeks
7 worked by the Class Members above the 20% increase.

8 18. “Final Approval” refers to the order of the Court granting final approval of this
9 Settlement Agreement and entering a judgment approving this Agreement on substantially the
10 terms provided herein or as may be modified by subsequent agreement of the Parties.

11 19. “Individual Class Payment” refers to each Participating Class Members share of
12 the Net Settlement Amount, as further discussed in Paragraph 48(c) below.

13 20. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
14 PAGA Penalties, as further discussed in Paragraph 48(c) below.

15 21. “Settlement Amount” is \$200,000.00, subject to the Escalator Clause and
16 exclusive of Defendants’ obligation to fund its share of payroll taxes, as further discussed in
17 Paragraph 48(c) below.

18 22. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(b)
19 below.

20 23. “Notice” means the notice of proposed class settlement that will be sent to the
21 Class Members and which will advise each Class Member of the settlement and his or her
22 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
23 setting of a Final Approval Hearing.

24 24. “Response Deadline” is 30 calendar days from the date the Notice is mailed to the
25 Class Members.

26 25. “Objecting Class Member” means a Class Member, other than Plaintiff, who
27 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 69(c)
28 below.

1 26. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
2 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
3 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
4 as the Individual PAGA payment allocated to each Aggrieved Employee.

5 27. “PAGA Period” is deemed to be any time during the period of February 14, 2021,
6 through January 30, 2023.

7 28. “Participating Class Member” means any and all Class Members who are deemed
8 to participate and receive an Individual Class Payment and do not opt-out by submitting timely
9 valid Requests for Exclusion.

10 29. “Parties” or “Settling Parties” mean Plaintiff and Defendants, collectively.

11 30. “Preliminary Approval Date” means the date the Court approves preliminarily the
12 Settlement Agreement and enters the Preliminary Approval Order.

13 31. “Preliminary Approval Order” means the judicial Order to be entered by the
14 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
15 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
16 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
17 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
18 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
19 object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to
20 review and comment upon the motion before it is filed.

21 32. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
22 benefit of the Participating Class Members and Aggrieved Employees, and from which the
23 settlement payments shall be made.

24 33. “Released Class Claims” or “Class Claims” by the Participating Class Members
25 upon Final Approval of the Settlement will include all claims stated in the operative Complaint
26 and those based upon the facts in the Complaint, including: (a) failure to pay minimum wages,
27 (b) failure to pay for rest and recovery periods, (c) failure to reimburse business expenses, (d)
28 failure to timely pay wages upon separation of employment, (e) failure to provide accurate

1 itemized wage statements, (f) unfair and unlawful competition, and (g) all other claims that
2 reasonably could have arisen out of the allegations made and based on the facts alleged in the
3 Complaint.

4 34. “Released PAGA Claims” or “PAGA Claims” means any and all PAGA claims
5 that Plaintiff alleged against the Released Parties, on behalf of himself and the State of
6 California, based on the facts stated in the Complaint in the Action and in the LWDA notice
7 letter, including all PAGA claims seeking civil penalties premised upon: (a) willful
8 misclassification, (b) failure to pay minimum wages, (c) failure to pay for rest and recovery
9 periods, (d) failure to reimburse business expenses, (e) failure to timely pay wages each period,
10 (f) failure to timely pay wages upon separation of employment, (g) failure to provide accurate
11 itemized wage statements, and (h) all other claims for civil penalties recoverable under PAGA
12 based on the facts or claims alleged in the Complaint. The time period governing the Released
13 PAGA Claims shall be any time during the PAGA Period.

14 35. “Released Parties” means Defendants, and its parents, subsidiaries, directors,
15 owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past
16 and present, and each of them and anyone acting in concert with foregoing.

17 36. “Release” shall mean the release and discharge of the Released Class Claims by
18 Plaintiff and all Participating Class Members and their assignees, and the Released PAGA
19 Claims by Plaintiff and all aggrieved employees.

20 37. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a)
21 below.

22 38. “Service Payment” or “Service Award” means the amount approved by the Court
23 to be paid to Class Representative in addition to his Individual Class Payment as a Participating
24 Class Member and Individual PAGA Payment as an Aggrieved Employee.

25 39. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any
26 and all work weeks during the Class Period during which the Class Member worked at least one
27 day for Defendants. Likewise, in the context of Aggrieved Employees, it means any and all
28 weeks worked during the PAGA Period during which the Aggrieved Employee worked at least

one day for Defendants.

B. General Terms

40. On February 14, 2022, Plaintiff filed a class action and representative PAGA action complaint with the San Bernardino Superior Court. Then, on April 21, 2022, Plaintiff filed the operative First Amended Complaint against Defendant Happy Express, Inc., and Does 1 through 20, alleging class and representative PAGA claims, including: (1) failure to pay minimum wages, (2) failure to pay for rest and recovery periods, (3) failure to reimburse for business expenses, (4) failure to timely pay final wages, (5) failure to provide accurate itemized wage statements, (6) unfair and unlawful competition pursuant to California Business and Professions Code §§ 17200 *et seq.*, and (7) - (13) related claims under PAGA.

41. Defendants deny Plaintiff's claims and allegations and contends that the Action is not suitable for class certification.

42. The Class Representative believes he can proceed with the representative and class claims, that the Action is meritorious, and that class certification is appropriate.

43. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including a sampling of payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendants. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants, and numerous potential appellate issues.

44. On August 16, 2022, Plaintiff and Defendants participated in a full-day mediation with Hon. Michael Marcus (Ret.), a well-respected mediator. However, the matter did not resolve at the conclusion of mediation. After months of extensive arms-length negotiations, the

Parties reached a global settlement on December 1, 2022.

45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgment to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

46. Stipulation for Class Certification. For settlement purposes only, Defendants will stipulate that the Class Members described herein who do not Request Exclusion from the Class may be conditionally certified as a Class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether certification would be appropriate in a non-settlement context. Defendants expressly reserves its rights and declares that it would continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

47. The financial terms of the Settlement are as follows:

(a) Settlement Amount: The Parties agree to settle this Action for the Settlement Amount, subject to the Escalator Clause and Defendants' obligation to separately pay its share of payroll taxes on the wage portion of the Individual Class Payments, which is the maximum amount that will be paid by Defendants and includes Individual Class Payments, Class Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, Administration Costs, and PAGA Penalties.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class Representative as awarded by the Court, the Administration Costs, and PAGA Penalties. If the

1 Court reduces the Attorneys' Fees and Costs Award, Service Award, or Administrator Costs, or
2 either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be
3 placed in the Net Settlement Amount and allocated to the Class.

4 (c) The Individual Class Payment for each Class Member will be calculated
5 by the Administrator using the Class Data provided by Defendants as follows. Compensable
6 workweeks will be all Weeks Worked by the Class Members during the Class Period. The
7 dollars per compensable work week will be calculated by dividing the total Weeks Worked by
8 Class Members into the Net Settlement Amount to determine a per work week value
9 ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks
10 Worked by a Participating Class Member during the Class Period to determine the distribution
11 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
12 Administrator shall proportionately increase the Individual Class Payments for each Participating
13 Class Member so that the amount distributed to Participating Class Members equals 100% of the
14 Net Settlement Amount.

15 (d) Allocation of Individual Class Payments: Because the Class Members
16 performed contract services for Defendants as independent contractors, rather than as employees,
17 and because Defendants fully dispute the allegations alleged herein, the Parties agree that the
18 Individual Settlement Payments will be allocated and paid to the Participating Class Members as
19 contract compensation, interest, and penalties from which no state or federal taxes will be
20 withheld or deducted. Participating Class Members will be issued an IRS Form 1099 and will
21 assume full responsibility and liability for the payment of taxes due, if any. The Parties make no
22 representations about the tax consequences to the Individual Settlement Payments.

23 (e) Service Payment to Class Representative: The amount, if any, awarded to
24 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
25 exceed \$7,500, in exchange for the service that Plaintiff performed on behalf of the Class.
26 Defendants agree not to oppose this request. The Service Payment to Plaintiff will be paid out of
27 the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in
28 connection with this payment. Plaintiff shall be solely and legally responsible to pay all

1 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
2 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
3 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
4 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
5 Class Members.

6 (f) Attorneys' Fees and Costs Award: Defendants agrees to not oppose a
7 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
8 Settlement Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees and
9 Cost Award"). Defendants agrees not to oppose any contention by Class Counsel that attorneys'
10 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
11 paid from the Settlement Amount, and, except for this award, Defendants shall have no further
12 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
13 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
14 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
15 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
16 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
17 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
18 Court.

19 (g) Administration Costs: The fees and other charges of the Administrator
20 will be paid from the Settlement Amount, not to exceed \$6,000, unless (1) the Escalator Clause
21 is triggered (whereby any reasonable increase in Administration Costs shall be paid from the
22 increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all
23 Parties and the Court.

24 (h) PAGA Penalties: The Parties agree that \$20,000 is allocated to PAGA
25 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
26 amount, \$15,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
27 Private Attorney General Act of 2004 ("PAGA") and \$5,000 (25%) will form the Individual
28 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata

on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

(i) Tax Liability: Class Counsel and Defendants make no representations as to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the Class Members are not relying on any statement or representation by Class Counsel or Defendants in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Individual Class Payments and Individual PAGA Payments, described herein. Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendants into compliance with any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described herein.

(j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX

1 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
2 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
3 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
4 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
5 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
6 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
7 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
8 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
9 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
10 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
11 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
12 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

13 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
14 Under no circumstances will any portion of the Settlement Amount revert to Defendants.
15 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
16 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
17 Individual Class Payment or Individual PAGA Payments will be made directly to each
18 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
19 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
20 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
21 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

22 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
23 reasonable and will so represent same to the Court.

24 **D. Release by the Participating Class Members**

25 48. Upon entry of the Final Approval Order and Defendants funding of the Settlement
26 Amount, and except as to such rights or claims as may be created by this Agreement, Plaintiff
27 and the Participating Class Members will forever completely release and discharge the Released
28 Parties from the Released Class Claims for the Class Period.

49. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

50. Class Representative, on behalf of himself and the Class, acknowledges and agrees that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself and the Class, acknowledges and agrees that Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides in pertinent part as follows: “An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

E. Release of PAGA Claims

51. Upon entry of the Final Approval Order and Defendants’ funding of the Settlement Amount, Plaintiff – in his individual capacity and on behalf of the State of California and LWDA – shall completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Period.

52. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from releasing the Released PAGA Claims.

53. It is the intent of the Parties that the Final Approval Order shall have full equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

F. Release by Plaintiff and Class Representative

54. Class Representative does hereby, for himself and his spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever,

1 from the beginning of time through the execution of this Stipulation, whether known or
2 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
3 upon, or relating to Class Representative's employment with Defendants or the remuneration for
4 or termination of such employment (the "Class Representative's Claims").

5 55. Without limiting the generality of the foregoing, this general release by Plaintiff
6 includes all federal, state and local statutory claims, federal and state common law claims
7 (including but not limited to those for contract, tort and equity), including without limitation the
8 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
9 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
10 Standards Act, the Employment Retirement Security Income Act of 1974, the California
11 Constitution, the California Fair Employment and Housing Act, the California Unfair
12 Competition Act (California Business and Professions Code section 17200 et seq.), and the
13 California Labor Code.

14 56. Plaintiff agrees that there is a risk that any injury that he may have suffered by
15 reason of the Released Parties' relationship with him might not now be known, and there is a
16 further risk that said injuries, whether known or unknown at the date of this Settlement
17 Agreement, might possibly become progressively worse, and that as a result thereof further
18 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
19 discharge the Released Parties, and understands that by the execution of this Settlement
20 Agreement no further claims for any such injuries that existed at the time of the execution of this
21 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
22 period from the beginning of time to the execution of this Settlement Agreement.

23 57. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
24 Section 1542 of the Civil Code of the State of California and does so understanding and
25 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
26 of the State of California states:

27 ///

28 ///

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
3 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
4 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
5 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
6 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
7 OR RELEASED PARTY.

8 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
9 full and complete release and discharge of all parties, Class Representative expressly
10 acknowledges that this Settlement Agreement is intended to include in its effect, without
11 limitation, all claims that Class Representative knew of, as well as all claims that he does not
12 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
13 period from the beginning of time to the execution of this Settlement Agreement, and that this
14 Settlement Agreement contemplates the extinguishment of any such Class Representative's
15 Claims. Notwithstanding the above, the general release by Class Representative shall not extend
16 to claims for workers' compensation benefits (including Workers Comp. Case ADJ 11781204),
17 claims for unemployment benefits, or other claims that may not be released by law.

18 **G. Interim Stay of Proceedings**

19 58. Pending completion of all of the prerequisites necessary to effectuate this
20 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
21 except such as is necessary to effectuate the Settlement.

22 **H. Notice Process**

23 59. Appointment of Administrator. The Parties have agreed to the appointment of the
24 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
25 using standard devices to obtain forwarding addresses, independently reviewing and verifying
26 documentation associated with any claims or opt-out requests, resolving any disputes regarding
27 the calculation or application of the formula for determining the Individual Class Payment and
28 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other
tasks as set forth herein or as the Parties mutually agree or that the Court orders.

1 60. Disputes Regarding Administration. Any and all disputes relating to
2 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
3 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
4 and conditions of this Agreement, until Plaintiff and Defendants notify the Court that all
5 payments and obligations contemplated by this Agreement have been fully carried out. Prior to
6 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
7 dispute without the necessity of Court intervention. The Administrator shall also be responsible
8 for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class
9 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
10 Agreement.

11 61. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
12 Order, Defendants shall provide the Class Data to the Administrator. The Administrator will run
13 a check of the Class Members' addresses against those on file with the U.S. Postal Service's
14 National Change of Address List. The Class Data provided to the Administrator will remain
15 confidential and will not be used or disclosed to anyone, except as required by applicable tax
16 authorities, pursuant to Defendants' express written consent, or by order of the Court. Although
17 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
18 Counsel from communicating with Class Members regarding the Action and Settlement.

19 62. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
20 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
21 calculation of all payments to be paid from the Settlement Amount, including the estimated
22 Individual Class Payments to each Class Member and Individual PAGA Payments to each
23 Aggrieved Employee (a person's name shall be redacted and a control number used in place of
24 the name). In the event that the total Workweeks worked by all Class Members triggers the
25 Escalator Clause, the Administrator shall notify the Parties of the increased Settlement Amount,
26 and related increased payments from the Settlement Amount, including increased Attorneys'
27 Fees and Costs and any increased Administration Costs, all of which shall be subject to Court
28 approval.

1 63. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
2 to the Class Members, by first class mail, in English, within ten (10) calendar days following the
3 Administrator's receipt of the Class Data. The Administrator shall use standard devices,
4 including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are
5 returned.

6 64. Returned Notices. The Administrator will take steps to ensure that the Notice is
7 received by all Class Members, including utilization of the National Change of Address Database
8 maintained by the United States Postal Service to review the accuracy of and, if possible, update
9 a mailing address. Notices will be re-mailed to any Class Member for whom an updated address
10 is located within ten (10) calendar days following both the Administrator learning of the failed
11 mailing and its receipt of the updated address. The Notice shall be identical to the original
12 Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or
13 objection must be returned by the later of the Response Deadline or fifteen (15) days after the
14 remailing of the Notice.

15 65. Presumption Regarding Receipt of Notices. It will be conclusively presumed that
16 if an envelope has not been returned to Administrator by the Response Deadline that the Class
17 Member received the Notice.

18 66. Disputes Regarding Class Data. Class Members are deemed to participate in the
19 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
20 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
21 Payment and Individual PAGA Payment, as well as the number of Workweeks he/she worked
22 during the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked
23 if they feel they should be credited with more Weeks Worked in the Class Period and/or PAGA
24 Period in California than Defendants' records show by timely submitting evidence to the
25 Administrator. Defendants' records will be presumed determinative absent reliable evidence to
26 rebut Defendants' records, but the Administrator will evaluate the evidence submitted by the
27 Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who
28 agree to meet and confer in good faith about the evidence to determine the Class Member's

1 actual number of Work Weeks and estimated Individual Class Payment and Individual PAGA
2 Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the
3 dispute to the Court to render a final decision. Class Members and Aggrieved Employees will
4 have until the Response Deadline to dispute Weeks Worked, object or opt out, unless extended
5 by the Court.

6 67. Declaration of Due Diligence. The Administrator shall provide counsel for the
7 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
8 diligence and proof of mailing with regard to the mailing of the Notice.

9 68. Class Members' Rights. Each Class Member will be fully advised of the
10 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
11 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
12 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
13 in accordance with the following guidelines:

14 (a) Requests for Exclusion from Class. Any Class Member, other than
15 Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to
16 the Settlement Administrator, postmarked on or before the Notice Response Deadline. The
17 Request for Exclusion should state:

18 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
19 CLASS IN THE HAPPY EXPRESS LAWSUIT. I
20 UNDERSTAND THAT IF I ASK TO BE EXCLUDED
21 FROM THE SETTLEMENT CLASS, I WILL NOT
22 RECEIVE ANY MONEY FROM THE SETTLEMENT OF
23 THIS LAWSUIT."

24 To be valid, any Request for Exclusion must include the full name, address, telephone
25 number, last four digits of the social security number or date of birth, and signature of the Class
26 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
27 Settlement Administrator at the specified address. Any such Request must be made in
28 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if

1 postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any
2 Class Member who timely requests exclusion in compliance with these requirements: (i) will not
3 have any rights under this Agreement, including the right to object, appeal or comment on the
4 Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will
5 not be bound by this Agreement, or the Judgment. Any Aggrieved Employee who requests
6 timely exclusion will still be subject to the PAGA Released Claims and receive a share of PAGA
7 Penalties, and such requests for exclusion shall be deemed void and defective.

8 (b) Binding Effect on Participating Class Members. All Participating Class
9 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
10 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
11 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
12 Settlement.

13 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
14 does not submit a valid and timely Request for Exclusion may object to the terms of this
15 Agreement by completing the Objection Form provided within the Notice Packet. To object, the
16 Class Member must mail the Objection Form to the Administrator, postmarked by the Response
17 Deadline in order to be timely, unless the Parties otherwise agree in writing. Additionally, any
18 objection must be made in accordance with the terms set forth in the Notice Packet. The
19 Administrator shall provide any objections to Class Counsel and Defense Counsel within three
20 (3) days of receipt, and the Administrator shall attach the same to its declaration of due diligence
21 and file with the Court prior to the Final Approval Hearing. Any Participating Class Member
22 who files an objection remains eligible to receive an Individual Class Payment. Plaintiff and
23 Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class
24 Member and/or his or her counsel related to any objections to the Settlement. Submitting an
25 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
26 preserved by becoming a party of record by timely and properly intervening or filing a motion to
27 vacate the judgment under Code of Civil Procedure § 663.

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1 (d) Failure to Object. Any Class Member who does not timely and properly
2 become a party of record by intervening or filing a motion to vacate the judgment waives any
3 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
4 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
5 under California Code of Civil Procedure section 473, and extraordinary writs.

6 (e) Responses to Objections. Counsel for the Parties may file a response to
7 any objections submitted by an Objecting Class Member at least five (5) court days before the
8 date of the Final Approval Hearing.

9 (f) Class Members will have until the Response Deadline to object or submit
10 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose
11 jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were
12 timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

13 69. Funding of the Settlement Amount. Defendants shall deposit the Settlement
14 Amount, plus Defendants' share of payroll taxes owed on Individual Class Payments, with the
15 Administrator as follows:

16 (a) By the later of October 1, 2023, or 10 days after the Effective Date, Defendants
17 shall fund 50% of the Settlement Amount, which shall be distributed in a manner
18 that compensates Plaintiff, the Participating Class Members, the Aggrieved
19 Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement
20 Administrator for 50% of the Court-awarded amounts; and

21 (b) By June 1, 2024, Defendants shall fund the remaining 50% balance of the
22 Settlement Amount, and which will be distributed in a manner that compensates
23 Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA,
24 Class Counsel [for fees and costs], and the Settlement Administrator for all
25 remaining Court-awarded amounts.

26 70. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
27 Settlement Amount by Defendants, the Administrator shall mail the Individual Class Payments
28 to the Participating Class Members, the Individual PAGA Payments to the Aggrieved

Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and will pay itself the Administration Costs.

71. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash their settlement checks. The release will be binding upon all Participating Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Administrator within 180 days of mailing, the Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class Counsel, Plaintiff, nor the Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she believes that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check.

(a) If any Participating Class Member's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member.

(b) If any Aggrieved Employee's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Aggrieved Employee.

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1 **I. Duties of the Parties Prior to the Court's Approval**

2 72. Promptly after execution of this Agreement, Plaintiff will move the Court for
3 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
4 accomplishing the following:

- 5 (a) Approving as to form and content the proposed Notice;
6 (b) Directing the mailing of the Notice by first class mail to the Class
7 Members;
8 (c) Preliminarily approving this Settlement;
9 (d) Preliminarily certifying the class for purposes of this Settlement;
10 (e) Advising the LWDA of the proposed Settlement; and
11 (f) Scheduling the Final Approval Hearing on the issue of whether this
12 Settlement should be finally approved as fair, reasonable and adequate.

13 **J. Duties of the Parties Following Court's Final Approval**

14 73. In connection with the Final Approval Hearing provided for in this Agreement,
15 Class Counsel shall submit a proposed Final Approval Order:

- 16 (a) Approving the Settlement, adjudging the terms thereof to be fair,
17 reasonable and adequate, and directing consummation of its terms and provisions;
18 (b) Approving Class Counsel's application for an award of attorneys' fees and
19 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
20 and the payment to the Administrator for costs of administering the settlement; and
21 (c) Entering judgment approving settlement.

22 **K. Voiding the Agreement**

23 74. If the Court fails or refuses to issue the Final Approval Order or fails to approve
24 any material condition of this Agreement which effects a fundamental change of the Settlement,
25 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
26 option of either Party.

27 75. In the event that 11 or more of the Class Members submit a timely and valid
28 Request for Exclusion, Defendants have the right in their sole and exclusive discretion to

1 terminate and withdraw from the Settlement at any time prior to the date the Court enters final
2 approval of the Settlement. Defendants will not encourage or in any way influence Class
3 Members to submit a Request for Exclusion.

4 76. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
5 have no further obligations under the Settlement, including any obligation by Defendants to pay
6 the Settlement Amount, or any amounts that otherwise would have been owed under this
7 Settlement.

8 77. If the Settlement is voided or fails for any reason, any costs incurred by the
9 Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise specified in
10 this Agreement.

11 **L. Other Terms**

12 78. Waiver. The waiver by one Party of any breach of this Agreement by another
13 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

14 79. Parties' Authority. The signatories hereto represent that they are fully authorized
15 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

16 80. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
17 accomplish the terms of this Agreement, including but not limited to, execution of such
18 documents and to take such other action as may reasonably be necessary to implement the terms
19 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
20 contemplated by this Agreement and any other efforts that may become necessary by order of the
21 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
22 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
23 cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's
24 preliminary and final approval of the settlement, and the final entry of judgment.

25 81. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
26 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
27 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
28 cause of action or rights released and discharged by this Agreement.

1 82. No Admission. Defendants denies any and all liability to Plaintiff and/or any
2 Class Member and/or Aggrieved Employee in this Action, as to any and all causes of action that
3 were asserted or that might have been asserted in this Action. Nonetheless, Defendants wishes to
4 settle and compromise the matters at issue in the Complaint to avoid further substantial expense
5 and the inconvenience and distraction of protracted and burdensome litigation. Defendants has
6 taken into account the uncertainty and risks inherent in litigation, and without conceding any
7 infirmity in the defenses that it has asserted or could assert against Plaintiff, have determined that
8 it is desirable and beneficial that Plaintiff' claims be settled in the manner and upon the terms
9 and conditions set forth in this Agreement.

10 83. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
11 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
12 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
13 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
14 Agreement with the intention of avoiding further disputes and litigation with the attendant
15 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
16 related documents such as the notices, and motions for preliminary and final approval, shall,
17 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
18 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
19 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
20 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
21 approved, the stipulation will be of no force or effect.

22 84. No Publicity. The Parties will not publicize the Settlement or disclose it to third
23 parties prior to the Court granting Preliminary Approval, except as required or necessary to
24 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
25 Class Representative agree that they will not discuss the Settlement with the media, any
26 settlement and verdict reporting service, any social media postings or other Internet postings.
27 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
28 other case materials in the Action related to seeking and obtaining Court approval of this

1 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
2 Members or their representatives about this Settlement, including through the posting of Court-
3 filed documents on Class Counsel's websites for access solely by the Class Members, or to
4 prevent the Parties or their representatives from communicating with financial or legal advisors
5 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
6 the Action has been settled on terms mutually agreeable to the Parties.

7 85. Notices. Unless otherwise specifically provided herein, all notices, demands or
8 other communications given hereunder shall be in writing and shall be deemed to have been duly
9 given as of the third business day after mailing by United States registered or certified mail,
10 return receipt requested, addressed:

11 *To the Class:*

12 Brian J. Mankin
13 *brian@lmlfirm.com*
14 Lauby, Mankin & Lauby LLP
15 5198 Arlington Ave, PMB 513
16 Riverside, CA 92504
17 Tel: (951) 320-1444 | Fax: (951) 320-1445

18 *To Defendants:*

19 Roxana Verano, Esq.
20 *roxana@landeggeresq.com*
21 LANDEGGER VERANO & DAVIS ALC
22 15760 Ventura Blvd., #1200
23 Encino, CA 91436
24 Tel: 818-986-7561 | Fax: 818-986-5147

25 86. Construction. The Parties hereto agree that the terms and conditions of this
26 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
27 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
28 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
and Defendants expressly waive the common-law and statutory rule of construction that
ambiguities should be construed against the drafter of an agreement and further agree, covenant,
and represent that the language in all parts of this Agreement shall be in all cases construed as a

1 whole, according to its fair meaning.

2 87. Captions and Interpretations. Paragraph titles or captions contained herein are
3 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
4 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
5 contractual and not merely a recital.

6 88. Modification. This Agreement may not be changed, altered, or modified, except
7 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
8 Agreement may not be discharged except by performance in accordance with its terms or by a
9 writing signed by all of the Parties hereto.

10 89. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
11 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
12 provide written notice to the other Party and allow an opportunity to cure the alleged
13 deficiencies, and Plaintiff and Defendants may agree to seek the help of the Mediator to resolve
14 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
15 own attorneys' fees and costs. This provision shall not apply to any legal action or other
16 proceeding instituted by any person or entity other than Plaintiff or Defendants.

17 90. Choice of Law. This Settlement Agreement shall be governed by and construed,
18 enforced and administered in accordance with the laws of the State of California, without regard
19 to its conflicts-of-law rules.

20 91. Integration Clause. This Settlement Agreement contains the entire agreement
21 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
22 or contemporaneous agreements, understandings, representations, and statements, whether oral
23 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
24 hereunder may be waived except in writing.

25 92. Binding On Assigns. This Agreement shall be binding upon and inure to the
26 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
27 successors and assigns.

28 ///

93. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

94. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: April 18, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:


Devin Teague (Apr 18, 2023 15:32 PDT)

Devin Teague

Dated: April 21, 2023

DEFENDANT HAPPY EXPRESS, INC.

Andrey Oganessian
By: Andrey Oganessian (name)
President (title)

Dated: April 21, 2023

DEFENDANT ANDREY OGANESYAN

Andrey Oganessian
Andrey Oganessian

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1 **APPROVED AS TO FORM:**

2 Dated: April 21, 2023

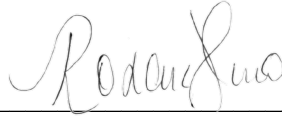
CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

3
4 

5 _____
6 Brian J. Mankin
Attorneys for Plaintiff

7 May 8
8 Dated: ~~April~~ May, 2023

DEFENSE COUNSEL
LANDEGGER VERANO & DAVIS ALC

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10 

11 _____
12 Roxana Verano, Esq.
13 Attorneys for Defendants
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EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00489 Teague v Happy Express Inc. (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Devin Teague</u>									
<u>14000-00489 Teague v Happy Express Inc.</u>									
02-09-2022	Approved		Non-Billable	E101 Copying	Grossi, Tracie L.	0.06	0.00	100.00	6.00
100 copies @ \$0.06 for LWDA and letters to employer									
02-11-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	75.00	0.00	1.00	75.00
LWDA Case Number: LWDA-CM-867356-22 to submit PAGA letter Order Number: ORD-000151479									
03-11-2022	Approved		Non-Billable	E108 Postage	Aguilera, Monica A	16.92	0.00	1.00	16.92
February 2022 Postage									
03-25-2022	Approved		Non-Billable	E112 Court fees	Grossi, Tracie L.	1,463.00	0.00	1.00	1,463.00
San Bernardino Superior Court Receipts #SC-2022-19644 and SC-2022-19645 - fax file complaint									
04-07-2022	Approved		Non-Billable	E125 Mediation fees	Grossi, Tracie L.	5,750.00	0.00	1.00	5,750.00
ADR Invoice 22-2234-MDM-01 for 8/16/22 Mediation with Judge Marcus									
05-13-2022	Approved		Non-Billable	E112 Court fees	Grossi, Tracie L.	34.00	0.00	1.00	34.00
Fee for fax file FAC									
06-22-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	94.00	0.00	1.00	94.00
Courtcall ID# 11540911 for 6/21/22 CMC									
08-01-2022	Approved		Non-Billable	E101 Copying	Chiarito, Tracie	0.06	0.00	8.00	0.48
8 copies @ .06 for Ntc of Change of Address									
08-26-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	182.67	0.00	1.00	182.67
Bosco Inv #7529243 Serve: Andrey Oganessian Summons: Amendment to Complaint: First Amended Complaint: Civil Case Cover Sheet; Certificate of Assignment; Guidelines for the Complex Litigation Program; ADR Court: San Bernardino County Superior Court - Central District Completed on: 08/22/2022									
09-30-2022	Approved		Non-Billable	E119 Experts	Chiarito, Tracie	318.75	0.00	1.00	318.75
Creal & Creal Inv #17929									
12-21-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	9.95	0.00	1.00	9.95
Receipt from TurboCourt to file Ntc of Ruling									

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
 Group By Staff Member Group
 Client - Project = 14000-00489 Teague v Happy Express Inc. (Active Only)
 Activity Code = All
 Expense Code = All
 View = Original
 Approval Status = All
 Selected Expenses = All
 From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Devin Teague</u>									
<u>14000-00489 Teague v Happy Express Inc.</u>									
12-22-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	94.00	0.00	1.00	94.00
Courtcall ID #11636526 for 12/21/22 CMC									
04-28-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	195.15	0.00	1.00	195.15
Bosco Inv #8782678 File and Conform: Motion Declaration (3) Proposed Order Court: San Bernardino County Superior Court - Central District Completed on: 04/27/2023									
05-10-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #7981639 - file Supplemental Declaration for MPA									
05-22-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11698347 for 5/19/23 MPA									
05-22-2023	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	3.00	0.00	1.00	3.00
Receipt for San Bernardino Superior Court for copy of signed PA order									
08-16-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Estimated cost for Courtcall for 8/17/23 DEF Motion to Be Relieved									
08-25-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	300.00	0.00	1.00	300.00
Estimated cost to file MFA and supporting documents via Bosco									
09-18-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	144.00	0.00	1.00	144.00
Estimated cost for Courtcall for MFA									
Project Total								8,840.87	
Client Total								8,840.87	
Grand Total								8,840.87	

EXHIBIT “C”