

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

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. Judge David Cohn, Dept.
S26 for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: May 19, 2023

Time: 10:00 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 department within my firm where I am also a Partner. I represent Plaintiff in this action and 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 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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 over 500 employee vs. employer litigation matters during my 22
7 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 over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 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). As of the end of last year, my team and I held the record for the largest
17 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. Over the last four or five consecutive years, I have been selected by my peers as a
28 "Super Lawyer" in Employment Litigation, a distinction that only 5% of lawyers receive.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested mediation, Plaintiff and Defendants (collectively, the “Parties”) continued additional negotiations and eventually entered into a Class Action and PAGA Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”). As of the filing of this Motion, Plaintiff obtained all signatures to the Settlement Agreement, but Defendant has not. Therefore, I’m attaching a partially signed version as **Exhibit 1**, and we will file a supplemental declaration attaching the fully signed version once the signatures are provided by Defendant. The Settlement Agreement seeks to release and discharge Defendants from the claims brought against it in exchange for Defendants’ agreement to pay \$200,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to represent a class of all current and former California resident truck drivers who were classified as independent contractors and performed services for Defendants in California at any time during the Class Period of February 14, 2018, through January 30, 2023. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement administrator costs of \$6,000, PAGA Penalties of \$20,000 of which \$15,000 will be paid to the LWDA and the remaining \$5,000 will be paid to the Aggrieved Employees, and a service award not to exceed \$7,500 to Plaintiff. After subtracting these deductions from the Settlement Amount, approximately \$79,833.33 will be available to pay individual settlement amounts to approximately 35 Class Members who do not opt-out of the settlement, as follows:

<i>Settlement Amount</i>	\$ 200,000.00
Attorneys’ Fees (1/3)	\$ 66,666.67
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 20,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 79,833.33

8. Assuming 58 Class Members, the average payment to each Class Member will be approximately \$1,396.44 ($\$79,833.33 / 58$). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately \$36.47 ($\$79,833.33 / 2,189$ estimated Work Weeks).

9. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class Period.

PROCEDURAL BACKGROUND

10. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

11. After being retained by Plaintiff, we submitted on February 9, 2022, letter to the California Labor Workforce Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act of 2004 (the “PAGA”), and simultaneously sent a letter to Defendant requesting the production of Plaintiff’s personnel and timekeeping records to further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

12. On February 14, 2022, we filed a complaint alleging class action causes of action and corresponding PAGA claims against Defendants for (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, and (6) unfair and unlawful competition.

/ / /

1 13. Defendants retained counsel and immediately began to defend the case. Then,
2 after early discussions among counsel, the Parties agreed to attend private mediation.

3 14. In preparation for the mediation, the Parties informally exchanged documents and
4 information that allowed both sides to calculate the potential damages and evaluate potential risk,
5 including policies and procedures pertaining to each claim alleged, and statistics relating to the
6 number of current and former employees, pay periods worked and other things. Defendant also
7 provided their written policies and practices and a robust sampling of payroll and timekeeping
8 records for Class Members. This information enabled both parties to take a deep dive into the
9 claims. Additionally, during this process, Plaintiff and their counsel analyzed, researched, and
10 investigated the potential issues, including matters related to the calculation of damages, trial,
11 and appellate issues and risks.

12 15. On August 16, 2022, Plaintiff and Defendant participated in mediation before
13 Hon. Michael Marcus (Ret.), a well-respected mediator. However, the matter did not resolve at
14 the conclusion of mediation. After months of extensive arms-length negotiations, the Parties
15 reached a global settlement on December 1, 2022, that resolved all claims brought Plaintiff. Now
16 the Parties seek the Court's preliminary approval of the Settlement.

17 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL'S INVESTIGATION, AND**
18 **EVALUATION OF THE SETTLEMENT**

19 16. The putative Class in this case consists of approximately 58 similarly situated
20 California resident truck divers classified as independent contractors and performed services for
21 Defendants in California at any time during the Class Period. Plaintiff alleged numerous wage
22 and hour violations on behalf of the Class Members. However, Defendant vigorously contested
23 and denied each of Plaintiff's material allegations on the merits and as to the propriety of a class
24 action or PAGA representative action, as discussed herein.

25 17. In preparation for mediation, Kristina Bui Carlson, an associate within my firm,
26 and I formulated a damages model and risk analysis based upon detailed data obtained through
27 informal discovery and information exchanges. The summary of the claims below is based on
28 calculations by our expert and us, and the risks that we potentially faced, giving significant credit

1 to the defenses that Defendant raised or would like raise in further proceedings. Following the
2 informal exchange and other information provided by Defendant, we estimated the following
3 data points through the date of mediation: (1) 31 class members, (2) 21 class members that
4 separated from employment during the 3-year lookback for Labor Code § 203, (3) 1,290
5 workweeks, and (4) approximately 899 workweeks during the PAGA Period. From these
6 metrics, and when factoring in claim certification probabilities and liability probabilities, we
7 formulated detailed damages models to value the claims in preparation for mediation and to
8 reach a realistic and reasonable resolution.

9 18. Here, there were two primary categories of claims alleged by Plaintiffs: (1)
10 unpaid wage claims under various theories (2) derivative claims for waiting time and wage
11 statement penalties due to the other alleged violations.

12 19. As to the unpaid wage claims, Plaintiff alleged three theories of liability.
13 Defendants paid Class Members on a “per-mile” driven basis. Therefore, Plaintiff alleged that
14 Defendants failed to pay all required minimum and overtime wages due to a practice that
15 required Class Members to complete non-driving tasks (*e.g.*, pre-trip and post-trip inspections,
16 fueling, going through truck scales, detention time) without any compensation for these tasks.
17 But Defendants vehemently opposed these unpaid wage claims on the merits and as to the
18 propriety of class certification. Due to the defenses and arguments raised, Plaintiff assigned a
19 20% risk for the unpaid wage claim at the class certification stage and an additional 20% risk on
20 the merits. In sum, Plaintiff’s counsel calculated the risk-adjusted value of the unpaid wage
21 claims as \$43,344.

22 20. Plaintiff alleged claims for waiting time penalties and wage statement violations.
23 But these claims were entirely derivative of the claims above, meaning that they only had merit
24 if the claims for unpaid wages were successful. The maximum values for these claims were as
25 follows: (1) \$151,200 for waiting time penalties [21 former employees x \$240 average daily pay
26 x 30 days], and (2) \$88,550 for wage statement violations [899 wage statements at the \$50/\$100
27 formula under § 226(e)].

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1 21. But Defendants raised a variety of defenses to these derivative claims that
2 impacted the valuation. Namely, Defendants argued that the wage statements did not violate
3 Labor Code § 226 and, even if there was a “technical” violation, Plaintiff would be unable to
4 prove the required “knowing and intentional” and “injury” elements. Based on these facts and
5 defenses, Plaintiff placed a nominal 20% risk at class certification (mirroring the claims on
6 which the wage statement claim was based) and estimated another 20% risk the merits, leading
7 to a risk-adjusted value of \$56,672 for the wage statement claims.

8 22. Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for
9 the fact that this claim was derivative of the unpaid wage claims and, if those claims failed at
10 certification or on the merits, there would be no waiting time penalties owed, so the same risks
11 for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest
12 claims succeeded at certification and on the merits, Plaintiff would have to prove that the
13 violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here,
14 Defendant argued there was no “willful” violation as they were inadvertent and unintentional.
15 As a result of this analysis, Plaintiff’s counsel applied a 20% risk at class certification and a 20%
16 risk on the merits, leading to a risk-adjusted value of \$74,088.

17 23. Then, Plaintiff also alleged willful misclassification claims against Defendants.
18 Given the total number of Class Members that were classified as independent contractors, despite
19 the allegations that the Class members drove Defendants’ trucks and were controlled by
20 Defendants, Plaintiff’s counsel estimated a maximum potential value for these claims of
21 \$270,000 (27 misclassified truck drivers multiplied by \$10,000 as a penalty under LC §
22 226.8(c)). However, Plaintiff’s counsel applied a a 20% risk on the merits.

23 24. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff
24 estimates the risk-adjusted class recovery as follows:

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28 ///

• Unpaid Wage Claims	\$	49,536
• Wage Statement Claims	\$	56,672
• Waiting Time Penalty Claims	\$	96,768
• Willful Misclassification	<u>\$</u>	<u>216,000</u>
• Total Risk Adjusted Penalties and Damages	\$	418,976

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

25. The settlement was the product of extensive arm's length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

26. The settlement will result in a fair payment to each class member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

27. Plaintiff's counsel brought to bear a great deal of experience in negotiating the settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery and investigation, making it possible to exercise informed judgment throughout the settlement process, including significant document review (*e.g.*, documents pertaining to Defendants' policies and procedures, personnel documents, among others), and conducted an extensive analysis of the detailed class-wide data provided by Defendants.

1 28. Based on my experience in other cases, including wage and hour matters, I
2 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
3 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
4 settlement at this time is in the best interests of the class. The settlement provides each class
5 member with compensation for the alleged violations when viewed in relation to the costs and
6 risks inherent in obtaining class certification and proceeding to trial.

7 29. Plaintiff's counsel, as well as Defense counsel, fully endorse the terms and
8 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

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10 30. Of course, the settlement amount represents a compromise figure, taking into
11 account the various risks surrounding class certification and the merits of Defendant's asserted
12 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
13 members, with no reversion to Defendants.

14 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

15 31. Plaintiff seeks an enhancement payment of \$7,500 for his service to the Class,
16 which I believe is fair and warranted. Mr. Teague came forward in an effort to effectuate a
17 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
18 They each assumed significant risk in bringing this litigation—namely, had he lost, he would
19 have been ordered to pay Defendants' costs.

20 32. Plaintiff provided invaluable assistance to my office and the Class in this case,
21 including providing factual background for the Class Complaint; reviewing the litigation
22 documents; providing information and documents about Defendants' policies and practices;
23 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
24 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
25 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
26 the reasons why he believes that the service award should be approved.

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1 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
2 **REQUESTED FEES AND COSTS**

3 33. As set forth above, I have handled over 250 class and representative actions, have
4 been appointed as class counsel and have successfully resolved over half of those cases, and
5 many others remain pending and will successfully resolve in the future.

6 34. When this case was taken on a contingency fee basis, with my firm agreeing to
7 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
8 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
9 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
10 those expenditures.

11 35. It is my experience that attorney fee awards of one-third of a common fund
12 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
13 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
14 is further warranted because it is within the range of reasonableness typically awarded in class
15 actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual
16 amount of costs incurred at the time of final approval.

17 **SETTLEMENT ADMINISTRATOR**

18 36. The parties request that the Court appoint Phoenix Settlement Administrators to
19 serve as the Settlement Administrator. Phoenix is experienced in administering class action
20 settlements, and has provided a proposal to administer this settlement for a total of \$6,000, which
21 is attached hereto as **Exhibit 4**.

22 **SUBMISSION TO THE LWDA**

23 37. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance
24 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 5**.

25 **EXHIBITS AND CONCLUSION**

26 38. A true and correct copy of the partially signed Settlement Agreement is attached
27 as **Exhibit 1**.

28 39. The proposed Class Notice is attached as **Exhibit 2**.

40. A true and correct copy of the notice letter we submitted to the LWDA is attached as **Exhibit 3**.

41. Phoenix's proposal to administer the Settlement is attached hereto as **Exhibit 4**.

42. The LWDA's confirmation of receipt of this Motion and Declarations is attached hereto as **Exhibit 5**.

43. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 27, 2023 at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “1”

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

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

Alfred J. Landegger, Esq.
alfred@landeggeresq.com
Roxana Verano, Esq.
roxana@landeggeresq.com
LANDEGGER VERANO & DAVIS ALC
15760 Ventura Blvd., #1200
Encino, CA 91436
Tel: 818-986-7561 | Fax: 818-986-5147

Attorneys for Defendants HAPPY EXPRESS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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DEVIN TEAGUE, individually, on a
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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.

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

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

11 **E. Release of PAGA Claims**

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

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

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

21 **F. Release by Plaintiff and Class Representative**

22 54. Class Representative does hereby, for himself and his spouses, heirs, successors,
23 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
24 personal representatives, and assigns forever and completely release and discharge the Released
25 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
26 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
27 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
28 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:

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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 __, 2023

DEFENDANT HAPPY EXPRESS, INC.

By: _____ (name)

_____ (title)

Dated: April __, 2023

DEFENDANT ANDREY OGANESYAN

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
7 Attorneys for Plaintiff

8 Dated: April ___, 2023

DEFENSE COUNSEL
LANDEGGER VERANO & DAVIS ALC

9
10 _____
11 Roxana Verano, Esq.
12 Attorneys for Defendants
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EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Devin Teague v. Happy Express, Inc.

(San Bernardino Superior Court, Case No. CIVSB2203408)

***The San Bernardino County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from a class action lawsuit (“Action”) against Happy Express, Inc. (“Defendant” or “Happy Express”) for alleged unpaid wage claims. The Action was filed by a former Happy Express employee, and seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of a class of current and former California resident truck drivers who performed services for Defendant in California and were classified as independent contractors during the Class Period (February 14, 2018 through January 30, 2023) (the “Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all current and former California resident truck drivers who performed services for Defendant in California and were classified as independent contractors during the PAGA Period (February 14, 2021, through January 30, 2023) (the “Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Happy Express to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Happy Express to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

[CLASS MEMBER NAME]

[ID/CONTROL NUMBER]

Two Parts	Weeks Worked During: Class Period (Class Member) and PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment (less withholding) and your Individual PAGA Payment are shown in the chart above, along with the Workweeks you are credited with working during the Class Period and PAGA Period, respectively, according to Defendant’s records. The actual amount you may receive likely will be different and will depend on several factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.)

If you believe that you worked more weeks during either period than Defendant’s records show in the chart above, you can submit a challenge by **DATE**, 2023 (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do <u>not</u> wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion Form by [REDACTED], 2023 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection Form stating why you object to the settlement by [REDACTED], 2023 (see Section 7 for details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: INSERT DATE, 2023 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative, Devin Teague, is a former Happy Express truck driver. The Action accuses Defendant of violating California labor laws due to the alleged: failure to pay minimum, failure to pay for rest and recovery periods, failure to reimburse business expenses, failure to timely pay wages each period and upon separation of employment, and failure to provide accurate itemized wage statements. Based on the same claims, including willful misclassification, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were eventually successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$200,000 as the Settlement Amount. Defendant has agreed to deposit the Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorneys' fees and expenses, the Administrator's Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Settlement in two parts: 50% by the later of October 1, 2023, or 10 days after the Judgment entered by the Court becomes final; and the remaining 50% by June 1, 2024. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys' fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$7,500 to the Class Representative as a Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representative's Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$6,000 to the Administrator for services administering the Settlement.
- D. Up to \$20,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to penalties and interest

(“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check are sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion and Objections (if any). The Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release: All Participating Class Members, on behalf of themselves and their respective representatives, agents, heirs, and assigns, release the Released Parties from all claims stated in the operative Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay for rest and recovery periods, (c) failure to reimburse business expenses, (d) failure to timely pay wages upon separation of employment, (e) failure to provide accurate itemized wage statements, (f) unfair and unlawful competition, and (g) all other claims for statutory penalties based on the facts or claims alleged in the operative Complaint (the “Released Class Claims”). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff on behalf of himself, all aggrieved employees, the State of California and the LWDA shall release the Released Parties from all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of himself and the State of California, based on the facts stated in the operative

Complaint in the Action and in the LWDA notice letter, including all PAGA claims seeking civil penalties that premised upon (a) willful misclassification, (b) failure to pay minimum wages, (c) failure to pay for rest and recovery periods, (d) failure to reimburse business expenses, (e) failure to timely pay wages each period, (f) failure to timely pay wages upon separation of employment, (g) failure to provide accurate itemized wage statements, and (h) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative Complaint (“Released PAGA Claims.”) The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until **INSERT DATE HERE** ("Response Deadline") to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of weeks worked based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. The easiest way to opt-out by completing, signing, and mailing the accompanying Request for Exclusion Form to the Settlement Administrator, postmarked on or before the Response Deadline (as a reminder, **the “Response Deadline” is DATE, 2023**).

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2023 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, on the enclosed Objection Form and include any and all evidence and supporting papers. The Objection Form and any accompanying evidence and papers must be sent to the Settlement Administrator at the address listed in Section 9 on the Objection Form, **postmarked** on or before the Response Deadline of [REDACTED], **2023**. If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2023, the Court will hold a public hearing in Department S26 of the Civil Complex Center for the Superior Court for the State of California, County of San Bernardino, 247 West Third Street, San Bernardino, CA 92415 for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff’s request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail.

Settlement Administrator
Name
Mailing Address
Telephone Number

For your convenience, the Administrator has uploaded various documents for this case to the following website: **PLEASE INSERT URL HERE**. Should you desire any additional information, or if you wish to communicate directly with Class Counsel, you may contact them at the contact information noted here:

Class Counsel

Brian Mankin, Esq.
brian@LMLfirm.com
Lauby Mankin Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on [REDACTED], 2023 and which is available to be inspected at any time during regular business hours at the Office of the Clerk, San Bernardino County Superior Court, at 247 West Third Street, San Bernardino, CA 92415.

**DO NOT TELEPHONE THE SUPERIOR COURT
TO OBTAIN INFORMATION ABOUT THE SETTLEMENT**

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “3”



February 9, 2022

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Happy Express, Inc.
25023 Hidden Willow Circle
Canyon Country, CA 91387

Andrey Oganesyan
25023 Hidden Willow Circle
Canyon Country, CA 91387

Re: PAGA Civil Penalty Claim
Devin Teague v. Happy Express, Inc. et al.

To the Labor and Workforce Development Agency, Happy, Express, Inc., Andrey Oganesyan, and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Devin Teague (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his employer(s), Happy Express, Inc. (“Happy Express”) and/or any affiliated entities, as well as its owners Andrey Oganesyan and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 256, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, among other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company in January 2022 as a truck driver. However, at all relevant times, the Company engaged in a practice of willfully misclassifying Claimant as an independent contractor. Claimant alleges that he and all other California resident truck drivers employed by the Company (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

Notably, at all relevant times, the Company engaged in a practice of willfully misclassifying the Aggrieved Employees as independent contractors when they are/were employees of the Company because they (A) are/were subject to the control and direction of the Company in connection with the performance of their work, both under contract and in fact, (B) performed work that was the core business of the company (e.g., cargo pickup and delivery, etc.), and therefore the tasks were not outside the usual course of the

Company's business, and (C) were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed by the Company.

Also, at all relevant times, Claimant and the Aggrieved Employees were subject to the direction and control of the Company in regard to work assignments, scheduling requirements, and days of work. Furthermore, the Company directly and indirectly exercised control over the wages, hours, and working conditions of Claimant and the Aggrieved Employees. At all relevant times, the daily schedule for Claimant and the Aggrieved Employees was controlled solely by the Company, and the Company told them the exact time and location for all of his daily appointments. Furthermore, through the performance of their job duties, Claimant and the Aggrieved Employees performed an integral and entirely essential aspect of the Company's business. In fact, Claimant and the Aggrieved Employees were tasked to perform the one and only service that the Company provided: cargo pickup and delivery. In this role, Claimant and the Aggrieved Employees drove trucks owned by the Company that were plastered with the Company's logo and information and operated under the Company's Department of Transportation authority (while using the Company's insurance). Additionally, the customers are and/or were the Company's customers, not those of Claimant or the Aggrieved Employees. Claimant and the Aggrieved Employees were also prohibited from performing similar services for other companies and, thus, were not engaged in an independently established trade, occupation or business of the same nature as the work performed by the Company. And, perhaps most importantly, the Company retained the right to terminate Claimant and the Aggrieved Employees' working relationship without cause and at its discretion. Despite these facts, the Company misclassified Claimant and the Aggrieved Employees as independent contractors.

In addition to the misclassification claims, Claimant and the Aggrieved Employees were subjected to a multitude of Labor Code violations. For instance, during employment, Claimant and the Aggrieved Employees were only paid on a piece-rate (per-mile) basis and, as such, did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs.

Furthermore, Claimant and the Aggrieved Employees were not provided proper minimum and regular wages due to Company's failure to accurately record and compensate for all hours worked. For example, Claimant and the Aggrieved Employees were often required to clock out for meal periods and/or rest breaks, yet were under the Company's control and required to perform duties for the Company while off the clock. As a result of this policy and practice, Claimant and the Aggrieved Employees were required to perform off-the-clock work that the Company either knew or should have known they were performing.

Additionally, at all relevant times, Claimant and the Aggrieved Employees were denied paid rest breaks by virtue of the Company's policy that only paid its truck drivers for miles driven. As Claimant and the Aggrieved Employees could not accrue miles during a rest break, Claimant and the Aggrieved Employees were illegally denied paid rest breaks. Claimant and the Aggrieved Employees were also not provided mandated 30-minute off-duty meal periods. Claimant and the Aggrieved Employees were not paid the mandatory one-hour wage premium for each such meal period or rest break denied. Also, the Company failed to pay Claimant and the Aggrieved Employees for rest and recovery periods and other nonproductive time as required by Labor Code § 226.2.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a



smart phone and related monthly data plan to log into an application that tracks mileage and GPS during the routes assigned to them by the Company.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums, and failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Happy Express, Inc., and Andrey Oganessian and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Happy Express, Inc., and Andrey Oganessian acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Happy Express, Inc., and Andrey Oganessian are an integrated enterprise and should be treated as a single employer because Happy Express, Inc., and Andrey Oganessian share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, Happy Express, Inc., and Andrey Oganessian share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Andrey Oganessian is now and at all material times herein mentioned was the owner of Happy Express, Inc., and Claimant's and the Aggrieved Employees' actual employer or, in the alternative, was an individual employed by the Company as a managerial and/or supervisory employee and/or agent. In addition, Claimant alleges that at all relevant times herein Andrey Oganessian had the authority, in the interest of the Happy Express, Inc., to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Happy Express, Inc., and Andrey Oganessian, are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Happy Express, Inc., and Andrey Oganessian, were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Happy Express, Inc., was merely the alter ego of Andrey Oganessian in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and Andrey Oganessian exercised undue dominance, control, influence, and management over Happy Express, Inc, Inc. Claimant further alleges that, at all relevant times Happy Express, Inc., has been inadequately capitalized to conduct its business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Andrey Oganessian has conducted his personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Happy Express, Inc., should be imposed jointly and severally against Andrey Oganessian. Adherence to the fiction of the separate existence of the corporate entity of Happy Express, Inc., would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Andrey Oganessian is liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

Based on Claimant’s own personal observations, all Aggrieved Employees employed or formerly employed by the Company are entitled to similar wage and hour claims, as further set forth below.

PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION

(Labor Code § 226.8)

Labor Code § 226.8(a) states “It is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor” and/or “(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual’s employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.” Labor Code § 226.8(b) states that if “a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” Labor Code § 226.8(c) further states that if “a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

In this matter, the Company willfully and knowingly misclassified Claimant and all Aggrieved Employees as independent contractors. Therefore, in addition to recovering the amount of attorneys’ fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code § 226.8.

PAGA ASSESSMENT FOR FAILURE TO PAY WAGES

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

During their employment, Claimant and the Aggrieved Employees were paid on a piece-rate basis and did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as mandatory paid rest breaks, pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Additionally, the piece-rate compensation paid to Claimant and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked. Therefore, this resulted in earned, but unpaid, minimum and regular wages due and owing to Claimant and the Aggrieved Employees. Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay



all wages including, but not limited to, minimum and regular wages in violation of the Labor Code and/or the IWC Wage Orders.

PAGA ASSESSMENT FOR FAILURE TO PROVIDE SEPARATE PAYMENT FOR REST AND RECOVERY PERIODS AND OTHER NONPRODUCTIVE TIME

(Labor Code § 226.2)

Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods and other nonproductive time. Claimant and the Aggrieved Employees are and/or were employees of the Company who were paid on a piece-rate basis, yet the Company did not comply with the requirements of Labor Code § 226.2 for its piece-rate employees. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699, among possibly other sections.

PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS, REST BREAKS, AND WAGE PREMIUMS

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and the Aggrieved Employees were not provided with paid rest periods by virtue of the Company’s policy that only paid on a piece-rate basis. As the Aggrieved Employees could not generate compensation during rest breaks, Claimant and the Aggrieved Employees were denied paid rest breaks. Furthermore, Claimant and the Aggrieved Employees were regularly not provided compliant meal periods and paid rest breaks because the Company did not have any policy which provided compliant meal periods and paid rest breaks to the Aggrieved Employees. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

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PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES

(Labor Code §§ 200, 221, 223)

California Labor Code § 200 defines wages to include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” California Labor Code § 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 221 reflects “‘California’s strong public policy favoring the protection of employees’ wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166, quoting *Harris v. Investor’s Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski, supra* at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

Here, the Company had a policy of unlawfully deducting amounts from the wages of the Aggrieved Employees, including Claimant. Accordingly, Labor Code §§ 210, 225.5, 558, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it engaged in the unlawful deduction of wages.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan in order to log into an application that tracks mileage and GPS during the routes assigned to them by the Company. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802. Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last



day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company failed to timely pay all wages due and owing each period, including, but not limited to, all wages and wage premiums. As a result, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

As discussed above, the Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment due to the violations discussed above. Furthermore, Claimant did not receive his final pay within the time required by Labor Code §§ 201 – 202. As a result, all such Aggrieved Employees are entitled to the “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR
FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods



during the pay period [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

Here, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked on the Aggrieved Employees’ wage statements; failure to accurately state the number of piece-rate units earned by the Aggrieved Employees and any applicable piece-rate; failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; failure to state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and failure to state the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period. Accordingly, Claimant and the Aggrieved Employees are entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney’s fees pursuant to *C.C.P.* § 1021.5. Please construe this correspondence as Claimants’ notification of alleged wrongdoing and attempted resolution in accordance with *C.C.P.* § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties, including unpaid wages under Labor Code § 558, related to the foregoing claims and remedies. If Claimant becomes aware of any



Re: Devin Teague v. Happy Express, Inc., et al.

February 9, 2022

Page 9

additional claims for Labor Code violations related to his employment and/or other employees of the Company, she reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,

A handwritten signature in black ink that reads "Kristina Bui Carlson". The signature is written in a cursive, flowing style.

By: Kristina Bui Carlson, Esq.

E-mail: kristina@lmfirm.com



4590 Allstate Drive, Riverside, CA 92501
Toll Free 888.959.8508

EXHIBIT “4”



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

April 5, 2023

CASE ASSUMPTIONS

Class Members	70
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	69
Subtotal Admin Only	\$6,687.67

Flat Fee Total \$6,000.00

For 70 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Two Years of Disbursements & Two Year Tax Reporting

Case: Teague v. Happy Express, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin, Lauby LLP
Contact Number: (951) 320-1444
Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **70** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	1		\$100.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	16		\$32.00
NCOA (USPS)	\$25.00	1		\$25.00
Total				\$407.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Reminder Postcard

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	70		\$7.00
Notice Packet & Opt-Out Form	\$1.45	70		\$101.50
Estimated Postage (up to 2 oz.)*	\$0.84	70		\$58.80
Check Cashing Reminder Postcard (x 2) Postage Included	\$0.60	14		\$12.48
Total				\$379.78

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.85	18		\$14.88
Remail Notice Packets	\$0.75	15		\$10.88
Estimated Postage	\$0.84	15		\$12.18
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$252.93

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	3		\$165.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	2		\$170.00
Total				\$725.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	3		\$405.00
Mail Class Checks * (x 2)	\$0.90	69		\$89.10
Estimated Postage (x 2)	\$0.61	69		\$60.40
Total				\$1,419.50

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks & Tax Forms (Postage Included)	\$1.70	14		\$23.46
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	4		\$340.00
Conclusion Reports	\$115.00	3		\$345.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$750.00	2		\$1,500.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated <u>14</u> Total Class Members	\$300.00	1		\$300.00
Total				\$3,503.46

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$6,687.67



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “5”