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5 Attorneys for Plaintiffs EDDIE ESCAMILLA,
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6 ESCAMILLA, on behalf of themselves, all others
similarly situated and on behalf of the general public.
7

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

10 Plaintiffs EDDIE ESCAMILLA and
11 GUSTAVO ESCAMILLA, on behalf of
themselves, all others similarly situated, and
12 on behalf of the general public,

13 Plaintiff,

14 v.

15 KEYSTONE FREIGHT CORP.; NATIONAL
RETAIL TRANSPORTATION, INC.; and
16 DOES 2 through 100,

17 Defendants.
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Case No. CIVDS1931366

**DECLARATION OF DAVID MARA, ESQ. IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: April 13, 2022

Time: 10:00 a.m.

Judge: Hon. David S. Cohn

Dept.: S26

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs and the putative class
3 in this matter. I am duly admitted to practice before all the courts of the state of California. The
4 following facts are within my personal knowledge and, if called to testify, I could and would
5 competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor Code
8 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and cases
9 alleging violations of the Private Attorneys General Act of 2004 ("PAGA").
- 10 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court
11 Case No. GIC834348, which was the underlying case in the California Supreme Court's
12 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in
13 which the California Supreme Court delineated the scope of employer obligations to provide, and
14 employee rights to receive, meal and rest periods under California law.
- 15 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California ("CAOC") in the recent
16 decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.* (2016) 2
17 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest breaks is not
18 considered duty-free).
- 19 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the California
20 Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and wage and hour
21 class action).
- 22 7. My firm has been granted class certification in both state and federal courts.
- 23 8. I am also Plaintiff's counsel in a host of other class actions involving violations of
24 California's wage and hour laws, many of which involve the transportation industry. For
25 example, I have been and am involved as counsel for plaintiffs in the following class actions
26 involving wage and hour violations under California law: *Davis v. Apria Healthcare Group*
27 (Case No. 37-2015-00007743); *Norona v. B&G Delivery System, Inc.* (Case No. 34-2015-
28 00186826-CU-OE-GDS); *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Cuellar-*
Ramirez v. US Foods, Inc. (Case No. RG15770766); *Peron v. The Vons Companies, Inc.*

(Case No. 37-2014-00006965); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No. DR150155); *Belton v. Pacific Pulmonary Services* (Case No. CGC-15-547564); *Medina v. Central Cal Transportation, Inc.* (Case No. RG15770011); *Dotson v. Asbury Environmental Services* (Case No. 34-2017-00214070-CU-OE-GDS); *Spikes v. Bear Trucking, Inc.* (Case No. CIV17DS1715151); *Montes v. Coram Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Martin v. Sysco Central California, Inc.* (Case No. 1:16-cv-00990-DAD-SAB).

9. Defendant is in the business of transporting freight for their customers. In order to transport its customers' freight, Defendant both contracts directly with entities or individuals to provide these freight delivery services ("Direct Contractors"), as well as utilizes other individuals who work for a Contract Carrier to either drive a truck and delivered freight for Defendant or assisted a Driver on his or her route in the delivery of freight ("Secondaries"). Plaintiffs Eddie Escamilla and Gustavo Escamilla contracted directly with Defendant as Direct Contractors, and Plaintiff Arturo Escamilla worked as a Secondary.

10. Plaintiffs filed this class action against Defendant on October 18, 2019. Claiming that they and others were misclassified by Defendant as independent contractors, they alleged causes of action on behalf of themselves and other Direct Contractors and Secondaries for: (1) Failure to Pay Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Provide Accurate Wage Statements; (6) Failure to Pay Wages Due at Termination; (7) Failure to Reimburse Business Expenses; and (8) Violation of Unfair Competition Law. On November 27, 2019, Plaintiffs filed a First Amended Complaint, removing Arturo Escamilla as a Plaintiff, and removing causes of action for Failure to Pay Overtime, Failure to Provide Accurate Wage Statements and Failure to Pay Wages Due at Termination.

11. In response, Defendant answered the complaint and filed a cross-complaint against J&G Bros, LLC and Eddie Escamilla Trucking, Inc., the entities Plaintiffs Gustavo and Eddie Escamilla operated when contracting with Defendant, in an attempt to hold Plaintiffs liable for the

violations alleged within the complaint. Plaintiffs demurred to Defendant's cross-complaint, which the Court sustained without leave to amend on December 18, 2020.

12. As part of the settlement process, the Parties agreed to file a Second Amended Complaint in this matter in order to re-allege claims for Failure to Provide Accurate Wage Statements and Failure to Pay Wages Due at Termination, allege claims under the Private Attorneys General Act of 2004 ("PAGA"), and re-add Arturo Escamilla as a Plaintiff. In compliance with Labor Code § 2699.3(a)(1), Plaintiffs submitted written notice via online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant, claiming that he and others were misclassified by Defendant as independent contractors on February 16, 2022. Plaintiffs respectfully request that the Court deem filed the Second Amended Complaint and deem it answered with the answer currently on file in this action.

13. Defendant denies the allegations of the action in its entirety, deny any liability or wrongdoing of any kind associated with the claims alleged in this action, and further deny that, for any purpose other than settling this action, this matter is appropriate for class treatment. Defendant further contends that it has complied with all applicable California laws, the California Labor Code, the applicable California Wage Order(s), and the Unfair Competition Law. Defendant finally contends that, if this matter were to be litigated further, it would have strong defenses to oppose class certification and succeed on the merits of Plaintiffs' causes of action.

14. Through discovery, Plaintiffs sought numerous documents and substantial amounts of data that were needed to evaluate the case. These documents included the contracts entered into between Defendant and Direct Contractors, records detailing all of the routes driven by Class Members for Defendant during the Claims Period, policies and practices in place during the class period, detailing requirements and expectations for Class Members when delivering freight for Defendant's customers, as well as data surrounding the number of current and former employees.

15. To obtain these documents and data, the Parties engaged in extensive discovery. Plaintiffs propounded three sets of special interrogatories and requests for production of documents on Defendant, and Defendant propounded two sets of special interrogatories, form

1 interrogatories, requests for admission, and requests for production of documents on
2 Plaintiffs. This discovery, in conjunction with the Parties' meet and confer efforts, resulted in
3 the production of nearly 4,000 documents and thousands of lines of data. Using the records
4 detailing the routes driven by Class Members and the data surrounding the number of current
5 and former Class Members, Plaintiffs' expert was able to provide numerous data points used
6 in establishing a potential exposure model in preparation for mediation.

7 16. Plaintiffs contend that Defendant can terminate Class Members with or without cause, which
8 is "the strongest evidence of the right to control..." *Ayala v. Antelope Valley Newspapers, Inc.*
9 (2014) 59 Cal.4th 522, 531. Defendant does not enter contractual agreements for any set
10 duration, instead entering into an agreement that acknowledges that Defendant can terminate
11 their "employment at any time, with or without cause and with or without prior notice."
12 Defendant, in its sole discretion, obtains the customers and enters into agreements to deliver
13 their freight, negotiates and sets the rates the customers are to pay, and assigns and dispatches
14 the Class Members directly to transport the freight. Additionally, Defendant exerts a
15 tremendous amount of control over Class Members in other aspects as well, as they must
16 preplan their routes, are required to avoid high crime areas, are not allowed to go off route,
17 make stops that are not authorized by Defendant, or leave a loaded trailer unattended, and they
18 must remain in constant contact with dispatch.

19 17. Defendant contends that Plaintiffs and putative class members are not its employees, and that
20 it does not control Class Members' hiring, firing, schedules, and/or pay. Defendant argues that
21 that Class Members have independence on how to perform their jobs. Defendant contends that
22 it does not control what Class Members do or how they perform their jobs. Defendant argues
23 that it cannot simply unilaterally decide to "terminate" Class Members at will. Defendant
24 claims they can merely terminate the agreement entered into with Direct Contractors through
25 the very terms of the agreement itself, severely limiting their ability to "terminate" Direct
26 Contractors at will. Furthermore, Defendant states they have absolutely zero control over the
27 hiring or firing of Secondaries, as those tasks are clearly delegated to the Direct Contractors as
28 a part of the agreements. Defendant also points out that the various "controls" exerted on

1 Class Members and “requirements” for how Class Members are to deliver freight are set forth
2 by the customers, not Defendant, and as such, these things cannot be considered as actions
3 undertaken by the Defendant.

4 18. While Plaintiffs believe in the strength of their arguments, they also recognize the risk that the
5 Court may determine Plaintiffs and the putative class were not employees of Defendant. **If the**
6 **Court ruled in favor of Defendant on this issue, all of Plaintiffs’ claims below would be**
7 **extinguished, as they are all dependent upon the Court agreeing that Defendant is**
8 **Plaintiffs’ and Class Members employer under California law.**

9 19. Defendant requires Direct Contractors to shoulder the costs of insuring their trucks, fueling
10 their trucks, amongst various other costs. Here, as Plaintiffs allege the Direct Contractors are
11 misclassified as independent contractors when, under California law, they should be classified
12 as employees. Just as Defendant could not charge its own employee drivers the cost of fuel
13 and insurance in the furtherance of Defendant’s business, it cannot do so to the Direct
14 Contractors, as they, too, are Defendant’s employees under California law.

15 20. Defendant argues that because Direct Contractors are not employees and properly classified as
16 independent contractors, it does not need to reimburse them for business expenses. Defendant
17 argues that California Labor Code § 2802 only obligates an employer to indemnify its
18 employee for expenses that the employee incurred while performing his or her job duties. As
19 Defendant claims it is lawfully contracting with the Direct Contractors to facilitate the
20 delivery of the customer’s freight, these expenses are properly borne by the Direct Contractors
21 pursuant to the terms of the agreements.

22 21. Defendant has no evidence they provided Class Members with meal or rest periods. They
23 have no meal or rest period policies they communicate to Class Members. They also have no
24 records of meal or rest periods. Thus, it will be fairly simple to show Defendant failed to
25 provide meal and rest periods to Class Members, who will be owed a 226.7 premium on every
26 qualifying shift.

27 22. Defendant again argues that because Class Members are not employees and properly
28 classified as independent contractors, it is under no obligation to provide Class Members with

1 meal or rest periods, as California law only requires an “employer” to provide them to its
2 “employees.” Defendant claims it is lawfully engaging with and utilizing Class Members to
3 facilitate the delivery of the through the use of the agreements it enters into with the Direct
4 Contractors, and that the agreements clearly state that all of that any Class Member
5 performing work under the terms of the agreements are independent contractors, not
6 employees.

7 23. Defendant also points out that the Federal Motor Carrier Safety Administration’s (FMCSA)
8 December 21, 2018, determination wherein the FMCSA found that California’s meal and rest
9 break laws are preempted as applied to drivers of property-carrying commercial motor
10 vehicles who are subject to the FMCSA’s own break regulations would similarly extinguish
11 all of Plaintiffs’ meal and rest period claims. On January 15, 2021, the Ninth Circuit upheld
12 the FMCSA’s determination that federal law preempted California’s meal and rest break rules.
13 *See Int’l Bhd. of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.* (2021) 986 F.3d
14 841. As such, Defendant argues that FMCSA’s December 21, 2018, determination provides
15 affirmative preemption defenses to Plaintiffs’ claims for meal and rest break violations.

16 24. Plaintiffs argue that the FMCSA’s determination does not apply retroactively. Federal agency
17 decisions and orders, like the FMCSA Order, are “subject to the presumption of prospectivity
18 that attends true exercises of legislative authority.” *Gutierrez-Brizuela v. Lynch*, 834 F.3d
19 1142, 1144 (10th Cir. 2016) (citing *De Niz Robles v. Lynch*, 803 F.3d 1165 (10th Cir. 2015)).
20 Hence, as the United Supreme Court found over thirty years ago, administrative rules and
21 orders are not retroactively applied unless “the power to promulgate retroactive rules...is
22 conveyed by Congress in express terms.” *Bowen v. Georgetown University Hospital*, 488 U.S.
23 204, 208 (1988). Evaluating whether the preemption decision is retroactive requires
24 determining whether the decision explicitly states that it applies retroactively, and if it does
25 not, determining whether the decision would have a retroactive effect on the rights of private
26 individuals. *See In re ADC Telecoms., Inc. Sec. Litig.*, 409 F.3d 974, 976 (8th Cir. 2005). If
27 the statute or regulation does not explicitly state that it applies retroactively, and its
28 application would have retroactive effect, the court may not apply it retroactively. *Id.* As

neither the decision nor its authorizing statute contain any explicit language on retroactivity, and because a retroactive application of the decision would detrimentally effect the right of private individuals (namely, extinguishing Plaintiffs' claims for meal and rest periods entirely), the preemption decision cannot be applied retroactively.

25. Direct Contractors are paid by the mile and by the delivery, they are not paid for time when "the wheels are not moving," but they are not stopped for a delivery, such as fueling up, sitting in traffic, for breakdowns, etc. A piece-rate pay formula that does not "compensate for all time worked does not comply with the California Labor Code, even if, averaged out, it would pay at least minimum wage for all hours worked." *Cardenas v. McLane Foodservices, Inc.* (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252; See also, *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 49; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 320; *Reinhardt v. Gemini Motor Transport* (E.D. Cal.2012) 869 F.Supp.2d 1158, 1168.

26. Secondaries are paid a daily flat rate. In California, wage structures that do not compensate by the hour, like a salary or a commission, are only said to compensate for *non-overtime hours*. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 565 ("[T]he flat sum compensates the worker for only non- overtime hours worked."). Put differently, flat daily rates earned are only compensation for eight daily hours and forty weekly hours. For any work over 8 daily or 40 weekly, employees are receiving no compensation under the flat rate pay structure. To find otherwise, meaning piece-rate and flat rate pay structures also pay for hours in excess of eight daily or forty weekly, would mean employees paid via these compensation methods would be paid *less* money per hour for overtime work, which is an interpretation that does not favor the protection of the employee's interest or discourage employers from imposing overtime work and cannot stand. *Id.* at 562 ("...[W]e are obligated to prefer an interpretation that discourages employers from imposing overtime work that favors the protection of the employee's interests."). Because these pay structures – like all non-hourly pay systems – can only pay for non-overtime hours, Secondaries are paid nothing for any hours worked in excess of eight in a single day.

27. Defendant contends that as Class Members are properly classified as independent contractors

1 under California law, none of the authorities relied upon by Plaintiffs renders Defendant liable
2 for any unpaid wages whatsoever. Defendant the only monetary compensation it is required to
3 provide to the Class Members at all at any point in time is solely based on the provisions of
4 the agreements it enters into with the Direct Contractors, which compensates them for all the
5 hours and various tasks necessary in furtherance of the freight deliveries. Furthermore, while
6 Defendant acknowledges that the agreements call for it to provide the Direct Contractors with
7 certain forms of compensation pursuant to the terms of the agreements, Defendant is under no
8 duty to provide any form of compensation to the Secondaries.

9 28. The Parties agreed to attend mediation with respected wage and hour mediator Jeff Ross on
10 August 12, 2021. The matter did not settle at mediation. Mr. Ross remained in regular contact
11 with the Parties to facilitate negotiations, culminating in Mr. Ross issuing a mediator's
12 proposal, which the Parties accepted on January 7, 2022. Since then, the Parties have met and
13 conferred regarding the terms of the settlement and finalized their agreement in the
14 Settlement. The Parties seek preliminary approval of the Settlement in the instant motion.

15 29. In addition to being able to discover the strengths and vulnerabilities associated with
16 Plaintiffs' claims, Defendant provided Plaintiffs with information and data points which
17 Plaintiffs submitted to an expert to establish a representative damage model, as explained
18 below, of the approximately 230 Class Members, 180 are Direct Contractors and 50 are
19 Secondaries.

20 30. Plaintiffs allege that as a result of Defendant's misclassification of Class Members, Direct
21 Contractors are forced to shoulder the costs of fuel and insurance in the furtherance of
22 Defendant's business, costs which Defendant would not be permitted to pass off to employees
23 under California law. If Plaintiffs were to prevail on this theory of liability, Direct Contractors
24 would be entitled to the reimbursement of these costs. At the time of mediation, Plaintiffs
25 were able to estimate that all Direct Contractors combined had approximately \$7,714.46 per
26 week deducted from their pay to cover costs such as insurance, permits, and other necessary
27 items, and incurred approximately \$7,126 per week in fuel costs. Therefore, the *maximum*
28 *potential exposure* under this theory of liability would be **\$5,016,075** (\$7,714.46 per week in

deductions x 52 weeks per year x 6.5 year Class Period = \$2,607,487 in total deductions) + (\$7,126 per week in fuel costs x 52 weeks per year x 6.5 year Class Period = \$2,408,588 in fuel costs) (\$2,607,487 + \$2,408,588 = \$5,016,075).

31. Defendant argues that because Direct Contractors are not employees and properly classified as independent contractors, it does not need to reimburse them for business expenses. Defendant argues that California Labor Code § 2802 only obligates an employer to indemnify its employee for expenses that the employee incurred while performing his or her job duties. As Defendant claims it is lawfully contracting with the Direct Contractors to facilitate the delivery of the customer's freight, these expenses are properly borne by the Direct Contractors pursuant to the terms of the agreements. Furthermore, Defendant points out that Plaintiffs would be unable to obtain class certification on this claim, claiming that Plaintiffs and Class Members would be unable to present adequate records of these supposed costs not only making damages completely unmanageable, but also calling into question the issue of liability, as Plaintiffs and Class Members would be unable to establish that they actually suffered this harm on a classwide basis. Should litigation continue, Plaintiffs' risk the Court siding with Defendant's view, which would extinguish any potential recovery on this cause of action.

32. Plaintiffs contend that because Defendant misclassifies Plaintiffs and Class Members as independent contractors, they are not provided with meal or rest periods, as independent contractors are not entitled to the protections California law provides for employees. If Plaintiffs were to prevail on this theory of liability, Class Members would be entitled to a meal and rest period premium for each shift worked. For Direct Contractors, the exposure under these causes of action is \$4,076,800 (70,000 shifts x \$29.12 average hourly rate¹ x 2 meal/rest period premiums per shift = \$4,076,800). For Secondaries, the exposure under these

¹ Plaintiffs estimate Direct Contractors were paid on average approximately \$1,747.65 per week. Based on a 5 day workweek with a 12 hour average shift length, Plaintiffs estimate the hourly average rate for Direct Contractors to be \$29.12 (\$1,747.65 / 5 / 12 = \$29.12).

causes of action is \$1,430,000 (26,000 shifts x \$27.50 average hourly rate² x 2 meal/rest period premiums per shift = \$1,430,000). Therefore, the *maximum potential exposure* under this theory of liability would be **\$5,506,800** (\$4,076,800 + \$1,430,000 = \$5,506,800).

33. Defendant again argues that because Class Members are not employees and properly classified as independent contractors, it is under no obligation to provide Class Members with meal or rest periods, as California law only requires an “employer” to provide them to its “employees.” Defendant claims it is lawfully engaging with and utilizing Class Members to facilitate the delivery of the through the use of the agreements it enters into with the Direct Contractors, and that the agreements clearly state that all of that any Class Member performing work under the terms of the agreements are independent contractors, not employees. Additionally, Defendant again points out that the FMCSA December 21, 2018, determination would similarly serve to completely extinguish these causes of action as preempted under federal law. Should the Court agree with Defendant’s arguments, Plaintiffs’ and Class Members would be entitled to no recovery under these causes of action.

34. Plaintiffs further allege that Defendant has failed to pay Class Members for all hours worked, as Defendant unlawfully misclassified them as independent contractors as opposed to employees. Direct Contractors were paid by the mile and by the delivery, and therefore were not compensated for any other time spent working. For Direct Contractors, the exposure under this cause of action is \$4,076,800 (70,000 shifts x 2 average hours spent on other work tasks per day x \$29.12 = \$4,076,800). Secondaries were paid a daily flat rate, and therefore were not paid for any hours worked after 8 hours had been worked in a shift. For Secondaries, the exposure under this cause of action is \$1,430,000 (26,000 shifts x 2 additional hours worked per day x \$27.50 = \$1,430,000). Accordingly, Defendant’s *maximum* exposure under Plaintiffs’ unpaid wages claim is **\$5,506,800** (\$4,076,800 + \$1,430,000 = \$5,506,800).

35. Further, if Plaintiffs were to prevail on their unpaid wages claims, they may also be entitled to

² Plaintiffs estimate that Secondaries were paid a flat daily rate of approximately \$220 on average (\$220 / 8 hours = \$27.50).

1 waiting time penalties. For Direct Contractors, the exposure under this cause of action is
2 \$985,420 (12 hour average day worked x \$29.12 average hourly rate x 30 days x 94 former
3 Direct Contractors = \$985,420). For Secondaries, the exposure under this cause of action is
4 \$214,500 (10 hour average day worked x \$27.50 average hourly rate x 30 days x 26 former
5 Secondaries = \$214,500). Plaintiffs calculate the potential *maximum* exposure under the
6 waiting time penalties cause of action as **\$1,199,920** (\$985,420 + \$214,500 = \$1,199,920).

7 36. Additionally, if Plaintiffs were to prevail on their unpaid wages claims, they may also be
8 entitled to wage statement penalties. For Direct Contractors, the exposure under this cause of
9 action is \$324,000 (81 Direct Contractors in the statutory period x \$4,000 maximum penalties
10 = \$324,000). For Secondaries, the exposure under this cause of action is \$168,000 (23
11 Secondaries in the statutory period x \$4,000 maximum penalties = \$92,000). Plaintiffs
12 calculate the potential *maximum* exposure under the wage statement cause of action as
13 **\$416,000** (\$324,000 + \$92,000 = \$416,000).

14 37. As explained above, Defendant contends that as Class Members are properly classified as
15 independent contractors under California law, none of the authorities relied upon by Plaintiffs
16 renders Defendant liable for any unpaid wages whatsoever. Defendant argues the only
17 monetary compensation it is required to provide to the Class Members at all at any point in
18 time is solely based on the provisions of the agreements it enters into with the Direct
19 Contractors, which compensates them for all the hours and various tasks necessary in
20 furtherance of the freight deliveries. Furthermore, while Defendant acknowledges that the
21 agreements call for it to provide the Direct Contractors with certain forms of compensation
22 pursuant to the terms of the agreements, Defendant is under no duty to provide any form of
23 compensation to the Secondaries. Furthermore, Defendant points out that Plaintiffs would be
24 unable to obtain class certification on this claim, claiming that Plaintiffs and Class Members
25 would be unable to present adequate records of these supposed unpaid wages not only making
26 damages completely unmanageable, but also calling into question the issue of liability, as
27 Plaintiffs and Class Members would be unable to establish that they actually suffered this
28 harm on a classwide basis.

1 38. As Plaintiffs' claims for waiting time and wage statement penalties are derivative of their
2 wage claims, Defendant argues that it would not be liable for these either. Plaintiffs had to
3 consider that the Court might disagree with their arguments and agree with the Defendant's
4 position. If this were to occur, this claim would fail.

5 39. Plaintiffs are also seeking PAGA penalties. PAGA allows the private enforcement of certain
6 California Labor Code sections relating to wage and hour violations. PAGA Section
7 2699(f)(2) provides for a standard penalty amount where a civil penalty is not otherwise
8 specified by statute:

9 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
10 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
11 period for each subsequent violation.

12 Plaintiffs allege that Defendant has six (6) violations – unlawful meal periods, unlawful rest
13 periods, failure to pay all time worked, failure to pay wages due at termination, failure to
14 provide accurate, itemized wage statements, and for the Direct Contractors, failure to
15 reimburse business expenses – of the Labor Code sections which give rise to PAGA penalties.
16 The statute of limitations for PAGA violations goes back one year. Plaintiffs calculated
17 Defendants' potential maximum exposure under PAGA as follows:

18 $\$100 \times 6 \text{ PAGA violations} \times 2,153 \text{ pay periods during the one-year statutory period} =$

19 $\$1,291,800 \text{ for Direct Contractors}$

20 $\$100 \times 5 \text{ PAGA violations} \times 800 \text{ pay periods during the one-year statutory period} =$

21 $\$400,000 \text{ for the Secondaries}$

22 $\$1,291,800 + \$400,000 = \$1,691,800$

23 40. Not taking into account any of their defenses or arguments, Defendant's total exposure if
24 Plaintiffs were successful in their core claims would be approximately \$16,029,675
25 [\$5,016,075 (reimbursement exposure) + \$5,506,800 (meal and rest period exposure) +
26 \$5,506,800 (unpaid wages exposure) = \$11,504,080]. If Plaintiffs' are successful in their
27 unpaid wages claims, they may also be entitled to damages for waiting time penalties in the
28 amount of \$1,199,920 and wage statement penalties in the amount of \$416,000. If all of

1 Plaintiffs' claims are successful, they may also be entitled to PAGA penalties in the maximum
2 amount of \$1,691,800.

3 41. In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the
4 settlement amount of \$1,500,000 – **with an average settlement share amount estimated at**
5 **\$3,760.86** – is a reasonable and fair settlement amount.

6 42. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1**. A true
7 and correct copy of the proposed Class Notice are attached to **Exhibit 1** as **Exhibit 1**.

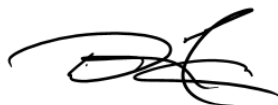
8 43. A true and correct copy of the proposed Second Amended Complaint is attached hereto as
9 **Exhibit 2**.

10 44. A true and correct copy of the filing receipt from Plaintiffs' upload of their preliminary
11 approval motion and supporting documents to the LWDA's website is attached as **Exhibit 3**.

12 45. A true and correct copy of the confirmation that the upload of Plaintiffs' preliminary approval
13 motion was received by the LWDA is attached as **Exhibit 4**.

14 I hereby declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16
17 Dated: March 21, 2022



18
19 _____
David Mara

Exhibit 1

Joshua D. Carlon, Esq. (SBN 307199)
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Attorneys for Plaintiffs EDDIE ESCAMILLA,
GUSTAVO ESCAMILLA, and ARTURO
ESCAMILLA, on behalf of themselves, all others
similarly situated and on behalf of the general public.

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

Plaintiffs EDDIE ESCAMILLA and
GUSTAVO ESCAMILLA, on behalf of
themselves, all others similarly situated, and
on behalf of the general public.

Plaintiffs,

vs.

KEYSTONE FREIGHT CORP.;
NATIONAL RETAIL
TRANSPORTATION, INC.; and DOES 2
through 100,

Defendants.

Case No.: CIVDS1931366

[Assigned to Hon. David Cohn, Dept. S-26]

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE**

Complaint Filed: October 18, 2019
Trial Date: Not Set Yet

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs EDDIE
2 ESCAMILLA, GUSTAVO ESCAMILLA, and ARTURO ESCAMILLA (“Plaintiffs”), on behalf of
3 themselves and all others similarly situated to them and as defined below, and NATIONAL RETAIL
4 TRANSPORTATION, INC. and KEYSTONE FREIGHT CORP. (collectively referred to as
5 “Defendant”), as set forth below:

6 **I. The Conditional Nature of This Stipulation**

7 Defendant and Class Representatives enter into this Joint Stipulation of Class Action and
8 PAGA Settlement and Release (“Stipulation,” “Settlement,” or “Settlement Agreement”), including
9 all associated exhibits or attachments, in compromise of disputed claims for the sole purpose of
10 resolving the matter entitled *Eddie Escamilla et. al v. Keystone Freight Corp. et. al*, San Bernardino
11 County Superior Court Case No. CIVDS1931366 (“Action” or “Litigation”). The Settlement is
12 subject to approval by the court. In the event that the Court does not execute and file the Final
13 Approval Order and Judgment, or in the event that the associated Judgment does not become final for
14 any reason, this Stipulation will be deemed null and void, it will be of no force or effect whatsoever,
15 it will not be referred to or used for any purpose whatsoever, and the negotiation, terms and entry of
16 it shall remain subject to the provisions of California Evidence Code §§ 1119 and 1152.

17 Defendant denies all of the claims and allegations asserted in the Litigation (as defined
18 herein). Defendant has agreed to resolve this Litigation via this Stipulation, but to the extent this
19 Stipulation is deemed void or does not take effect, Defendant does not waive, but rather expressly
20 reserves, all rights to challenge all such claims and allegations in the Litigation upon all procedural
21 and factual grounds, including without limitation the ability to challenge suitability for class treatment
22 or representative adjudication on any grounds or to assert any and all defenses or privileges. The
23 Class Representatives and their counsel agree that Defendant retains and reserves these rights. In
24 particular, the Class Representatives and their counsel waive and agree not to argue or to present any
25 argument that Defendant would be estopped from contesting class certification because it has entered
26 into this Stipulation.

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1 compromise and settlement of disputed claims. No action taken by the Parties whether previously or
2 in connection with the negotiations or proceedings connected with the Settlement or this Agreement
3 shall be deemed or construed to be an admission of the truth or falsity of any allegations, claims, or
4 defenses heretofore made, or an acknowledgment or admission by any party of any fact, fault,
5 liability, or wrongdoing of any kind whatsoever.

6 Neither the Settlement, nor any act performed or document executed pursuant to or in
7 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or
8 evidence of, the validity of any claim made by the Plaintiffs or Class Members, or of any wrongdoing
9 or liability of the Released Parties (as defined below); or (b) is or may be deemed to be, or may be
10 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the
11 Litigation or in any proceeding in any court, administrative agency or other tribunal; or construed as
12 an admission by Plaintiffs regarding the validity of any allegation or claim asserted in this Action or
13 that Plaintiffs have waived any allegation or claim asserted in the Action.

14 In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the
15 extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense
16 to, and may be used as the basis for an injunction against, any action, suit or other proceeding that
17 may be instituted, prosecuted or attempted in breach of this Settlement Agreement or the releases
18 contained herein.

19 In light of the above, Defendant has determined that it is desirable and beneficial to it that the
20 Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

21 **V. Claims of the Class Representatives and Benefits of Settlement**

22 The Class Representatives believe that the claims asserted in the Litigation have merit. The
23 Class Representatives and Class Counsel recognize and acknowledge, however, the expense and time
24 associated with continued litigation against Defendant through class certification, trial, and/or
25 appeals. The Class Representatives and Class Counsel have also taken into account the uncertain
26 outcome and risks of any litigation, and in particular putative class actions such as this Litigation, as
27 well as the difficulties and delays inherent in such litigation. The Class Representatives and Class
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Counsel are also mindful of the inherent problems of proof in establishing and overcoming potential defenses to the claims asserted in the Litigation. In light of these considerations, the Class Representatives and Class Counsel believe that the Settlement set forth in the Stipulation confers substantial benefits and is in the best interests of the Class.

VI. Terms of Stipulation and Agreement of Settlement

1. Definitions

As used in all parts of this Stipulation (including the exhibits which are incorporated as part of the Stipulation), the following terms have the meanings specified below:

1.1 “Settlement Class” or “Class Members” means any and all persons that performed work for Defendant in California pursuant to owner-operator agreements (“Direct Contractors”) and/or pursuant to being hired by Direct Contractors to perform the work under the owner-operator agreements without being a party to the agreements (“Secondaries”) during the time period of October 18, 2015, through April 11, 2022.

1.2 “Class Counsel” means David Mara and Matthew Crawford of MARA LAW FIRM, PC, 2650 Camino Del Rio North, San Diego, CA 92108.

1.3 “Class Period” means the time period from October 18, 2015 to April 11, 2022.

1.4 “Class Workweeks” means the following: six times the number of Workweeks Participating Class Members who were Direct Contractors worked for Defendant during the Class Period plus the number of Workweeks Participating Class Members who were Secondaries worked for Defendant during the Class Period.

1.5 “Court” means the Superior Court of the State of California, for the County of San Bernardino.

1.6 “Effective Date” means the later of: (a) if no objections to the Settlement are submitted, the date on which the Court issues the Final Approval Order and Judgment; (b) if any objections to the Settlement are submitted, the date which is forty-five (45) calendar days after notice of entry of the Final Approval Order and Judgment if no notice is filed within that time seeking appeal of the Final Approval Order and Judgment and if no motion for extension to appeal is filed; or (c) if

1 a notice of appeal is filed, the date upon which all appellate and/or other proceedings resulting from
2 the notice of appeal have been terminated in such a manner as to permit the Final Approval Order
3 and Judgment to take effect in substantially the form described herein

4 1.7 “Employer Taxes” means Defendant’s share of payroll taxes (e.g. UI, ETT, Social
5 Security, and Medicare taxes) with respect to the wages portion of Individual Settlement Amounts,
6 which will be paid by Defendant separately and in addition to the Maximum Settlement Amount.

7 1.8 “Skip Tracing” means the utilization of Accurint or Experian, after the Reasonable
8 Address Verification, to review the accuracy of and, if possible, to update a mailing address for a
9 Class Member in the event that his or her Class Notice is returned to the Settlement Administrator as
10 undeliverable without a forwarding address.

11 1.9 “Maximum Settlement Amount” is the amount of One Million Five Hundred and
12 Thousand Dollars and Zero Cents (\$1,500,000.00), which is the maximum amount to be paid by
13 Defendant pursuant to the Settlement Agreement, which will include: Attorneys’ Fees and Costs,
14 Settlement Administration Costs, Service Payments, PAGA Penalties, and the Net Settlement
15 Amount.

16 1.10 “Individual Class Settlement Amount” means an individual Participating Class
17 Member’s share of the Net Settlement Amount, which will be allocated as 25% wages and 75%
18 interest and penalties.

19 1.11 “Individual Class Settlement Payment” means the net payment of a Participating Class
20 Member’s Individual Settlement Amount, after reduction for the applicable taxes.

21 1.12 “Individual Class Workweeks” means the following: for Direct Contractors, this term
22 means six times the number of workweeks that the Direct Contractor worked for Defendant during
23 the Class Period; for Class Members that were Secondaries, this term means the number of
24 Workweeks Secondaries worked for Defendant during the Class Period.

25 1.13 “Individual PAGA Settlement Payment” means the net payment of a PAGA
26 Employee’s share of the \$18,750 (25% of the \$75,000 to be paid in settlement of the PAGA claims
27 in the Litigation), which will be allocated as 100% penalties.

1 1.14 “Individual PAGA Workweeks” means the following: for Direct Contractors, this
2 term means six times the number of Workweeks PAGA Employees that were Direct Contractors
3 worked for Defendant during the PAGA Period; for PAGA Employees that were Secondaries, this
4 term means the number of Workweeks Secondaries worked for Defendant during the PAGA Period.

5 1.15 “Last Known Address” means the most recently recorded mailing address for a Class
6 Member, as such information is contained in employment, payroll, or personnel records maintained
7 by Defendant.

8 1.16 “Net Settlement Amount” means the Maximum Settlement Amount, less the amount
9 that will be available for payment to all Participating Class Members (subject to the occurrence of the
10 Effective Date), and is calculated by subtracting all of the following from the Maximum Settlement
11 Amount: (1) attorneys’ fees in the amount of up to \$500,000.00 and reimbursement of litigation costs
12 and expenses in the amount of up to \$20,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2)
13 service awards to Plaintiffs Eddie Escamilla and Gustavo Escamilla of \$10,000 each and Plaintiff
14 Arturo Escamilla of \$5,000; (3) fees and expenses of administration of the Settlement to the
15 Settlement Administrator in an amount not to exceed \$15,000 (“Settlement Administration Costs”);
16 and (4) the \$75,000 in PAGA Penalties. The Net Settlement Amount is currently estimated to be
17 approximately \$865,000, and this figure may change depending on the actual amounts awarded by
18 the Court for the Settlement Administration Costs, Attorneys’ Fees and Costs, and Service Payments,
19 and approved by the Court for PAGA Penalties.

20 1.17 “Notice of Class Action Settlement” or “Class Notice(s)” means a notice titled “Notice
21 of Class Action Settlement” to be approved by the Court, substantially in the form attached hereto as
22 “**Exhibit 1**.” The Notice of Class Action Settlement will constitute the class notice pursuant to
23 California Rule of Court, Rule 3.769(f).

24 1.18 “Opt Out” means a Class Member’s act of excluding him or herself from the
25 Settlement, by way of submitting a timely and valid Request for Exclusion to the Settlement
26 Administrator, in conformity with the requirements set forth herein and in the Class Notice. PAGA
27 Employees will release their Released PAGA Claims and receive an Individual PAGA Settlement
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1 Payment regardless of whether they request exclusion from the Settlement.

2 1.19 “Final Approval Order and Judgment” means the judgment and order to be entered
3 by the Court, substantially in the form that the parties mutually agree to and lodge with the Court,
4 which will be a judgment for purposes of California Rule of Court, Rule 3.771(a) (“Judgment”) and
5 constitute approval pursuant to California Rule of Court, Rule 3.769(a). The Final Approval Order
6 and Judgment will be posted on the Settlement Administrator’s website for a period of sixty (60)
7 calendar days in compliance with California Rule of Court, Rule 3.771(b).

8 1.20 “PAGA Employees” means all Class Members who worked for Defendant at any time
9 from October 18, 2018 through April 11, 2022.

10 1.21 “PAGA Penalties” means the penalties pursuant to California Labor Code §§ 2698, *et*
11 *seq.*, the Private Attorneys General Act of 2004 (“PAGA”) in the amount of \$75,000.00 to be paid in
12 settlement of the PAGA claims in the Litigation. PAGA Penalties are to be approved by the Court
13 pursuant to California Labor Code § 2699 and are to be distributed as follows: seventy-five percent
14 (75%) to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) that will be distributed
15 to PAGA Employees.

16 1.22 “PAGA Period” means the time period from October 18, 2018 to April 11, 2022.

17 1.23 “PAGA Workweeks” means the following: six times the number of Workweeks
18 PAGA Employees that were Direct Contractors worked for Defendant during the PAGA Period plus
19 the number of Workweeks Secondaries worked for Defendant during the PAGA Period.

20 1.24 “Participating Class Members” or “Settlement Class” means all Class Members who
21 do not Opt Out pursuant to Paragraph 3.3.4 and, thus, become bound by the Judgment.

22 1.25 “Person” means a natural person, corporation, company, partnership, firm,
23 association, or society.

24 1.26 “Preliminary Approval Date” means the date on which the Court grants preliminary
25 approval of the Settlement.

26 1.27 “Preliminary Approval Order” means an order to be executed and filed by the Court,
27 substantially in the form that the parties mutually agree to and lodge with the Court, which will

1 constitute an order certifying a provisional class for settlement purposes only pursuant to California
2 Rule of Court, Rule 3.769(d) and an order setting a Final Approval Hearing pursuant to California
3 Rule of Court, Rule 3.769(e).

4 1.28 “Reasonable Address Verification” means the utilization of the National Change of
5 Address Database maintained by the United States Postal Service to review the accuracy of and, if
6 possible, update a mailing address.

7 1.29 “Released Class Claims” means all claims, demands, rights, liabilities and causes of
8 action of every nature and description whatsoever including without limitation statutory,
9 constitutional, contractual or common law claims, against the Released Parties (as defined below),
10 and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class
11 Members’ employment by Defendant in California, that arise under any state or local law or state
12 administrative order that was or could have been pled based on the facts alleged in the Operative
13 Complaint, including claims of failure to pay minimum wages, failure to pay overtime wages, failure
14 to provide compliant meal periods and/or associated premiums, failure to provide wage statements,
15 failure to provide compliant rest periods and/or associated premiums, failure to pay wages timely at
16 termination, failure to reimburse for business expenses, unfair competition, and violations of
17 California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197,
18 1197.1, 1198, 2800, 2802 the applicable Wage Order of the Industrial Wage Commission, and
19 California Business & Professions Code §§ 17200 to 17208, including without limitation all related
20 claims for restitution and other equitable relief arising from California Business and Professions Code
21 §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys’ fees or litigation costs, and any
22 other related claims and/or penalties. The release does not extend to any claims not alleged in the
23 operative Class Action Complaint and specifically excludes claims for workers’ compensation,
24 personal injuries, unemployment insurance, state disability compensation, claims under the
25 Employment Retirement Income Security Act of 1974, previously vested benefits under any employer
26 sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including
27 but not limited to those arising under the Age Discrimination In Employment Act, the California Fair

1 Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil
2 Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal
3 Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the
4 Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations
5 of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or
6 harassment. This release does not include any of the claims encompassed within the Released PAGA
7 Claims (as defined below).

8 1.30 “Released PAGA Claims” means all claims, demands, rights, liabilities and causes of
9 action of every nature and description whatsoever including without limitation statutory,
10 constitutional, contractual or common law claims, against the Released Parties (as defined below),
11 and any of them, for civil penalties pursuant to PAGA, that accrued during the PAGA Period, and as
12 a result of PAGA employees’ employment by Defendant in California, that arise under any state or
13 local law or state administrative order that was or could have been pled based on the facts alleged in
14 the Operative Complaint and the forthcoming notice to the LWDA, including claims of failure to pay
15 minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or
16 associated premiums, failure to provide wage statements, failure to provide compliant rest periods
17 and/or associated premiums, failure to pay wages timely at termination, failure to reimburse for
18 business expenses, and violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7,
19 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Wage Order of the
20 Industrial Wage Commission. The release does not extend to any claims not alleged in the operative
21 Class Action Complaint and the forthcoming notice to the LWDA.

22 1.31 “Released Parties” means Defendants National Retail Transportation, Inc. and
23 Keystone Freight Corp. and each of their parent companies, subsidiaries, affiliates, current and former
24 management companies, shareholders, members, agents (including any investment bankers,
25 accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and
26 employees) predecessors, successors, and assigns.

27 1.32 “Response Deadline” means the date that is sixty (60) calendar days after the date on
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1 which the Settlement Administrator initially mails the Class Notice to the Class Members, which will
2 be the deadline for a Class Member to Opt Out, dispute the number of Workweeks credited to him or
3 her, and/or object to the Settlement, and which will be indicated on the Class Notice that is mailed to
4 the Class Members.

5 1.33 “Request for Exclusion” means a written request to be excluded from the Settlement,
6 which must be made in writing submitted to the Settlement Administrator by mail, postmarked on or
7 before the Response Deadline, and which must contain the case name (*Eddie Escamilla et. al v.*
8 *Keystone Freight Corp. et. al*, San Bernardino County Superior Court Case No. CIVDS1931366), as
9 well as the Class Member’s full name, address, telephone number, last four (4) digits of his or her
10 Social Security number, and signature, and a clear statement indicating that he or she seeks to exclude
11 him or herself from the Settlement.

12 1.34 “Settlement Administrator” means the third-party settlement administration firm,
13 Phoenix Class Action Administration Solutions.

14 1.35 “Final Approval Hearing” means a hearing set by the Court for the purpose of
15 determining the fairness, adequacy and reasonableness of the Settlement pursuant to class action
16 procedures and requirements and entering Judgment, and required under California Rule of Court,
17 Rule 3.769(a).

18 1.36 “Unknown Claims” means any Released Claims which the Class Representatives do
19 not know or suspect to exist in their favor at the time of the entry of the Judgment, and which if known
20 might have affected the settlement with and release of Defendant.

21 1.37 “Updated Address” means a mailing address that was updated via a Reasonable
22 Address Verification, via an updated mailing address provided by the United States Postal Service or
23 a Class Member, via Skip Tracing, or via a Locator Service.

24 1.38 “Workweeks” means the numbers of workweeks worked by the Class Members for
25 Defendant during the Class Period.

2. Settlement Amount, Timing of Payments, Tax Reporting Obligations, and Other Obligations of Defendant and the Settlement Administrator

2.1 Defendant will fund the total Maximum Settlement Amount, along with the Employer Taxes (which will be paid by Defendant separately and in addition to the Maximum Settlement Amount). The Maximum Settlement Amount will be paid as follows: Defendant shall deposit the required maximum payout of \$1,500,000.00 with the Settlement Administrator in one installment no later than forty-five (45) days after the Effective Date. If the Court's approval of this settlement is overturned on appeal, all settlement funds deposited by Defendant with the Settlement Administrator to date shall be refunded to Defendant within fourteen (14) days of the Court's order declining to approve the settlement, and Defendant shall be excused from making any further settlement payment installments.

2.2 The Settlement Administrator will administer the Settlement and perform any function related to settlement administration at the agreed-upon instruction of both Class Counsel and Defendant, including, and not limited to, establishing and maintaining a settlement website and toll-free telephone line for Class Members to call with inquiries regarding the Settlement, distributing the Class Notice, performing skip traces with respect to Class Notices that are returned as undeliverable and without a forwarding address on or before the Response Deadline, receiving and processing Requests for Exclusion and objections to the Settlement, adjudicating Class Members' disputes regarding Workweeks, providing Class Counsel and counsel for Defendant with weekly updates on the status of the settlement administration process (including the names and percentages of Class Members who Opt Out or object), calculating and handling inquiries regarding the calculation of the Individual Settlement Amounts, preparing a declaration to submit to the Court that details the settlement notice administration process and identifies each Class Member who Opts Out, and distributing the Maximum Settlement Amount. The actions of the Settlement Administrator will be governed by the terms of this Stipulation. The Parties, through their counsel, may provide written information needed by the Settlement Administrator pursuant to the Stipulation.

2.3 The Parties agree to cooperate in good faith and to coordinate with each other and the Settlement Administrator to carry out the terms of the Settlement, including, without limitation, by providing reasonably available information regarding Class Members.

2.4 Defendant, through the Settlement Administrator, will distribute payments as follows:

(a) Class Representative Enhancement Payment: Subject to Court approval, the Plaintiffs Eddie Escamilla and Gustavo Escamilla shall each receive a service award of \$10,000, and Plaintiff Arturo Escamilla shall receive a service award of \$5,000. Defendant agrees not to oppose the amount of the Named Plaintiffs' and Class Representatives' service award. Since it is the intent of the Parties that the service award to the Named Plaintiffs and Class Representatives is for their service to the Class Members, and not wages, the Claims Administrator will not withhold any taxes from the service award. The Claims Administrator will report the service award on a Form 1099, which it will provide to the Named Plaintiffs and Class Representatives and to the pertinent taxing authorities.

(b) Attorneys' Fees and Litigation Costs: Class Counsel shall submit their Application for Award of Attorneys' Fees and Costs to the Court before the Final Approval Hearing. Class Counsel will seek attorneys' fees and costs in the amount of \$500,000.00, and actual costs up to \$20,000, subject to court approval. Class Counsel shall serve Defendant with copies of all documents in support of their Application for Award of Attorneys' Fees and Costs. Defendant agrees not to oppose the Application for Award of Attorneys' Fees and Costs. The Claims Administrator will report the attorneys' fees and costs award on a Form 1099, which it will provide to Class Counsel and to the pertinent taxing authorities.

(c) Claims Administration Costs: Subject to Court approval, the Claims Administrator shall be paid an amount which is expected to not exceed \$15,000.00 for all fees and costs relating to the administration of this settlement, all tax document preparation, custodial fees and accounting fees, all costs and fees associated with preparing, issuing, and mailing any and all Class Notices, all costs and fees associated with computing, reviewing, and paying distributions from the Maximum Settlement Amount, all costs and fees associated with preparing any tax returns and any other filings

required by any governmental taxing authority or agency, all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering disbursements from the Maximum Settlement Amount, and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Stipulation.

2.5 No later than sixty (60) calendar days after Effective Date or fifteen (15) calendar days after the payment of funds to the Settlement Administrator – whichever is sooner, Defendant, through the Settlement Administrator, and according to the terms, conditions and procedures set forth in Paragraph 2.6 of this Stipulation, shall pay to each Participating Class Member and PAGA Employee their Individual Class Settlement Amount and Individual PAGA Settlement Payment, respectively. Each of the payments to Participating Class Members will be inclusive of interest and penalties, including wage statement penalties, and will be allocated as follows: 25% to satisfaction of claims for unpaid wages; 75% to the satisfaction of claims for interest and penalties. All settlement payments for wages shall be subject to required withholdings and deductions as W-2 wage payments. With regard to payments in settlement of claims for penalties and interest, these payments shall be issued through a 1099 form and not subject to withholdings or deductions. The payments to PAGA Employees are allocated as 100% penalties and shall also be issued through a 1099 form and not subject to withholdings or deductions.

2.6 The Claims Administrator shall compute the Individual Class Settlement Amount and Individual PAGA Settlement Payment for the Participating Class Members as follows:

(a) The payment of the Individual PAGA Settlement Payments will be calculated as follows: \$18,750 will be allocated to PAGA Employees as follows: each PAGA Employees' portion will be determined by dividing each PAGA Employees Individual PAGA Workweeks, by the total amount of PAGA Workweeks, and then multiplying the result by \$18,750.

(b) The payment of the Individual Class Settlement Payments will be calculated as follows: For each Participating Class Member, the Participating Class Members Individual Class Workweeks will be divided by the total number of Participating Class Member Workweeks. The resulting number will then be multiplied by the Net Settlement Amount.

1 (c) The Parties agree that the above-described formulas and distribution methods
2 are reasonable and fair in light of the Parties' investigation of the claims of the Class, and the relative
3 degree of uncertainty, risk of outcome of further litigation, and difficulties and delays inherent in such
4 litigation of these claims.

5 2.7 Defendant, through the Claims Administrator, will report each payment made on the
6 Maximum Settlement Amount to government authorities including the Internal Revenue Service as
7 required by law, and it shall make all required deductions and/or withholdings. Defendant, through
8 the Claims Administrator, shall report payments for penalties and interest to the Internal Revenue
9 Service (and other relevant governmental agencies) as non-wage income in the year of payment on
10 a Form 1099, or similar form issued to the Participating Class Members and PAGA Employees in
11 question.

12 2.8 To the extent that there are excess funds from uncashed checks for Class Members
13 and PAGA Employees who cannot be located, the parties agree that such funds shall be submitted to
14 the State Controller Unclaimed Property Fund in the name of the Class Member and/or PAGA
15 Employee for whom the funds are designated, 180 days after the checks have been mailed to the Class
16 Members and PAGA Employees.

17 **3. Procedure for Approval and Implementation of Settlement**

18 **3.1 Preliminary Approval**

19 3.1.1 The Class Representatives, through their counsel of record, will file an
20 unopposed motion for preliminary approval of Settlement, seeking an order approving the Settlement
21 pursuant to the California Rule of Court, Rule 3.769(e), and this Stipulation will be filed with the
22 Court contemporaneously and/or as part of the motion. By way of the motion, the Class
23 Representatives will request that the Court enter a Preliminary Approval Order, approving the
24 distribution of the Class Notice and scheduling the Final Approval Hearing (pursuant to California
25 Rule of Court, Rule 3.769(e)) for the purposes of determining whether to grant final approval of the
26 Settlement and enter Judgment in conformity with California Rule of Court, Rule 3.769(h). The
27 motion for preliminary approval of Settlement will be filed with the Court no later than thirty (30)

1 calendar days after receipt of the fully executed Stipulation by Class Counsel.

2 3.1.2 The Settlement will be void if the Court categorically refuses to enter the
3 Preliminary Approval Order in its entirety or in a substantially similar form; however, the Parties are
4 to take all reasonable steps to cure any non-material issues so as to avoid the Settlement being void.

5 **3.2 Notice to Class Members**

6 3.2.1 No later than twenty (20) calendar days after the Preliminary Approval Date,
7 the Settlement Administrator will mail the Court-approved Class Notice to all Class Members. The
8 Class Notice will be mailed via first class mail through the United States Postal Service. The envelope
9 containing the Class Notice will bear the following phrase in bold type, ¼ inch below the return
10 address or ¼ inch above the addressee's address: RETURN SERVICE REQUESTED. The envelope
11 will also bear the following phrase in the bottom left hand corner: IMPORTANT – NATIONAL
12 RETAIL TRANSPORTATION, INC. CLASS ACTION SETTLEMENT INFORMATION.
13 PLEASE OPEN IMMEDIATELY. The Class Notice and its envelope or covering will be marked to
14 denote the return address of the Settlement Administrator as set forth in the Class Notice.

15 3.2.2 Defendant will prepare a list, in an electronically usable format for the
16 Settlement Administrator, containing for each Class Member, to the extent Defendant has such
17 information, the following: the full name, Last Known Address, social security number, and dates of
18 employment as a non-exempt or hourly-paid employee of Defendant during the Class Period ("Class
19 List"). By granting preliminary approval of the Settlement, the Court will be deemed to have
20 authorized Defendant to provide the Settlement Administrator with the Class List. Defendant will
21 provide the Class List to the Settlement Administrator and Class Counsel within fourteen (14)
22 calendar days following the Preliminary Approval Date.

23 3.2.3 For Class Members who were employees of Defendant as of the Preliminary
24 Approval Date the Settlement Administrator will mail the Class Notice to the Last Known Address
25 provided by Defendant. No Reasonable Address Verification will be conducted for Class Members
26 who were employed by Defendant as of the Preliminary Approval Date.

27 3.2.4 For Class Members who were not employed by Defendant as of the
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1 Preliminary Approval Date prior to mailing the Class Notice, the Settlement Administrator will
2 undertake a Reasonable Address Verification to ascertain the accuracy of the Last Known Address of
3 the Class Member. To the extent this process yields an Updated Address, that Updated Address will
4 be treated as the Last Known Address for purposes of this Stipulation and for Class Notice mailing.

5 3.2.5 If a Class Member is known to be deceased, the Class Notice for that deceased
6 Class Member will be mailed to the Last Known Address (or Updated Address, if applicable) of the
7 legal representative of the deceased Class Member's estate, to the extent known; otherwise, it will be
8 mailed to the Last Known Address (or Updated Address, if applicable) of the deceased Class Member.

9 3.2.6 Unless the Settlement Administrator receives a Class Notice returned from the
10 United States Postal Service for reasons discussed below in this paragraph, on or before the Response
11 Deadline, that Class Notice will be deemed to have been mailed and received by the Class Member
12 to whom it was sent five (5) calendar days after the mailing. In the event that subsequent to the first
13 mailing of a Class Notice and on or before the Response Deadline, the Class Notice is returned to the
14 Settlement Administrator by the United States Postal Service without a forwarding address, the
15 Settlement Administrator will undertake a Skip Tracing on the Class Member to attempt to ascertain
16 the current address of the Class Member, and if such an address is ascertained, the Settlement
17 Administrator will undertake a single re-mailing of the Class Notice to any Updated Address that is
18 located for the Class Member, within three (3) business days of receipt of the returned Class Notice,
19 and the Class Notice will be deemed mailed and received at that point. In the event that subsequent
20 to the initial mailing of a Class Notice and on or before the Response Deadline, the Class Notice is
21 returned to the Settlement Administrator by the United States Postal Service with a forwarding
22 address for the Class Member, the forwarding address will be deemed the Updated Address for the
23 Class Member, the Settlement Administrator will undertake a single re-mailing of the Class Notice
24 to the Updated Address within three (3) business days of receipt of the returned Class Notice, and the
25 Class Notice will be deemed mailed and received at that point. The Settlement Administrator will
26 include a cover letter with any re-mailing to inform the Class Member that the Class Notice was re-
27 mailed and that he or she has the later of the Response Deadline or ten (10) calendar days from the

1 date on which the Class Notice was re-mailed (which shall be the date the re-mailing of the Class
2 Notice is postmarked) to Opt Out, object to the Settlement, and/or dispute the number of Workweeks
3 credited to him or her. Compliance with the procedures described in this paragraph will constitute
4 due and sufficient notice to Class Members of this Settlement and of the Final Approval Hearing, and
5 will satisfy the requirements of due process. Nothing else will be required of or done by the Parties,
6 Class Counsel, counsel for Defendant, or the Settlement Administrator to provide notice of the
7 Settlement and the Final Approval Hearing.

8 3.2.7 No later than seven (7) calendar days after the Response Deadline, the
9 Settlement Administrator will provide Class Counsel and counsel for Defendant with a declaration
10 attesting to completion of the notice process, including any attempts to obtain Updated Addresses for,
11 and the re-sending of, any returned Class Notices, to be filed with the Court by Class Counsel.

12 3.3 Responses to the Notice of Class Action Settlement

13 3.3.1 Disputing Workweeks: If a Class Member disagrees with the number of
14 Workweeks credited to him or her as set forth in his or her Class Notice, he or she must submit a
15 written dispute along with documentation that supports his or her belief that he or she should be
16 credited with a different number of Workweeks. The dispute must be submitted to the Settlement
17 Administrator by mail, postmarked on or before the Response Deadline. The dispute must contain
18 the case name and number of the Action (*Eddie Escamilla et. al v. Keystone Freight Corp. et. al*, San
19 Bernardino County Superior Court Case No. CIVDS1931366), as well as the Class Member's name,
20 address, telephone number, last four (4) digits of his or her Social Security number, and signature.
21 The dispute must also contain a clear statement indicating that the Class Member disputes the number
22 of Workweeks credited to him or her. The Settlement Administrator will review the Workweeks
23 dispute and supporting documentation and make a determination based upon the submitted
24 documentation as to the validity of the Class Member's claim. If the Settlement Administrator needs
25 further information from Defendant concerning the Class Member's claim, the Settlement
26 Administrator will notify Defendant and Class Counsel and request the needed information.
27 Defendant's records will be presumed determinative if there is a dispute over the dates of employment

1 that the Class Member worked as a non-exempt or hourly-paid employee in California, unless the
2 Class Member has submitted valid and compelling documentation to support his or her claim to a
3 different number of Workweeks than the number shown on the Class Notice. The Settlement
4 Administrator will resolve all disputes by applying the above standard, and the decision of the
5 Settlement Administrator on any such disputes will be final.

6 3.3.2 Entry of Appearance at Class Members' Own Expense: Pursuant to California
7 Rule of Court, Rule 3.766(d)(5), any Class Member who does not Opt Out may, if the Class Member
8 so desires, enter an appearance through counsel at his or her own expense, and will be advised of this
9 by way of the Class Notice. Class Members who choose to enter such an appearance are responsible
10 for any attorneys' fees or costs incurred as a result thereof.

11 3.3.3 Objections to Settlement: Class Members who do not Opt Out may object to
12 the Settlement by submitting a written objection to the Settlement Administrator, postmarked no later
13 than the Response Deadline. A written objection to the Settlement must be signed by the Class
14 Member and dated, and additionally state the Class Member's name, last four (4) digits of his or her
15 Social Security number, dates of employment as a non-exempt or hourly-paid employee of Defendant
16 in California, the case name and number of the Action (*Eddie Escamilla et. al v. Keystone Freight*
17 *Corp. et. al*, San Bernardino County Superior Court Case No. CIVDS1931366), all legal and factual
18 bases for objection to the Settlement, whether the Class Member intends to appear at the Final
19 Approval Hearing, and whether the Class Member is represented by legal counsel (and if so,
20 identifying the legal counsel and providing said legal counsel's mailing address). Alternatively, Class
21 Members may choose to voice their objections at the Final Approval Hearing. A Class Member who
22 objects to the Settlement will still be considered a Participating Class Member who is subject to the
23 Settlement.

24 3.3.4 Opting Out of Settlement: Class Members may elect to Opt Out of the
25 Settlement and, thus, exclude themselves from the Settlement. Class Members who wish to exercise
26 this option must submit a timely and valid Request for Exclusion to the Settlement Administrator.
27 The written request for exclusion must: (a) state the Class Member's name, address, telephone

1 number, and the last four digits of the Class Member's social security number or employee
2 identification number; (b) state the Class Member's intention to exclude themselves from or opt-out
3 of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class
4 Member or his or her lawful representative; and (e) be postmarked no later than the Response
5 Deadline, in accordance with Paragraph 3.2.6. If a valid Request for Exclusion is not received by the
6 Settlement Administrator from a Class Member on or before the Response Deadline, then that Class
7 Member will be deemed to have forever waived his or her right to Opt Out. The Class Notice will
8 advise Class Members of their option to Opt Out and will contain instructions on how to do so. Class
9 Members who do not Opt Out by submitting valid and timely Requests for Exclusion will be deemed
10 to be Participating Class Members, will be bound by the Settlement and the Judgment entered based
11 thereon. Class Members who Opt Out by submitting valid and timely Requests for Exclusion will not
12 be bound by the Settlement, will not be entitled to any benefits thereunder, or to make any objection
13 to the Settlement. PAGA Employees will release their Released PAGA Claims and receive an
14 Individual PAGA Settlement Payment regardless of whether they request exclusion from the
15 Settlement.

16 3.3.5 If a Class Member submits both a Request for Exclusion and an objection to
17 the Settlement, the Request for Exclusion will be accepted and the objection will be disregarded.

18 3.3.6 The Parties agree that the Response Deadline will not be extended, and no
19 untimely submissions will be honored, under any circumstances, unless mutually agreeable by the
20 Parties and/or except to the extent permitted under Paragraph 3.2.6.

21 **3.4 Final Approval Hearing.**

22 3.4.1 After the Response Deadline, a Final Approval Hearing will be held before the
23 Court in order to: (1) determine whether the Court should grant final approval of the Settlement; (2)
24 consider objections to the Settlement; and (3) consider Class Representatives' application for an
25 award of Attorneys' Fees and Costs to Class Counsel and the Service Payment to the Class
26 Representatives. At the Final Approval Hearing, the Parties will request that the Court grant final
27 approval of the Settlement and enter the Final Approval Order and Judgment. The Parties will take

1 all reasonable efforts to secure entry of the Final Approval Order and Judgment. If the Court rejects
2 the Stipulation, fails to enter the Final Approval Order and Judgment, this Stipulation will be void,
3 and Defendant will have no obligation to make any payments under the Settlement, other than the
4 Settlement Administration Costs; however, the Parties and their counsel agree to make all reasonable
5 efforts to fix any issues that the Court cites for its non-approval as set forth in Paragraph 3.1.2.

6 **3.5 Releases**

7 3.5.1 Release by Participating Class Members. Upon the Effective Date, each of the
8 Participating Class Members (including the Class Representatives) will be deemed to have, and by
9 operation of the Judgment will have fully, finally, and forever released, relinquished and discharged
10 Defendant and the Released Parties from any and all Released Class Claims.

11 3.5.2 Release by PAGA Employees. Upon the Effective Date, each of the PAGA
12 Employees will be deemed to have, and by operation of the Judgment will have fully, finally, and
13 forever released, relinquished and discharged Defendant and the Released Parties from any and all
14 Released PAGA Claims.

15 3.5.3 Class Representatives' General Release of Claims

16 i. In addition to those releases set forth in Paragraph 3.5.1 hereof, with
17 respect to any and all Released Class Claims, upon the Effective Date, the Class Representatives will
18 expressly and will be deemed to have, and by operation of the Judgment will have, waived the
19 provisions, rights and benefits of California Civil Code § 1542 with respect to the Released Claims,
20 which provides as follows:

21 **A general release does not extend to claims that the creditor or**
22 **releasing party does not know or suspect to exist in his or her**
23 **favor at the time of executing the release and that, if known by**
him or her, would have materially affected his or her settlement
with the debtor or released party.

24 ii. In consideration for the Service Payments and as an inducement for
25 Defendant to enter into this Stipulation, with respect to the Class Representatives only, the Released
26 Claims will additionally include any and all claims including Unknown Claims against Defendant
27

1 that accrued during the Class Period, but does not include claims for: age discrimination under the
2 Age Discrimination In Employment Act, unemployment insurance, workers' compensation benefits,
3 state disability compensation, previously vested benefits under any Employer-sponsored benefits plan
4 or claims under the Employment Retirement Income Security Act of 1974.

5 iii. Any Class Representatives may hereafter discover facts in addition to
6 or different from those which he or she now knows or believes to be true with respect to the subject
7 matter of the Released Claims, but any such Class Representatives, upon the Effective Date, will be
8 deemed to have, and by operation of the Judgment will have fully, finally, and forever settled and
9 released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or
10 non-contingent, whether or not concealed or hidden, which then exist, or previously have existed
11 upon any theory of law or equity now existing or coming into existence in the future, including, but
12 not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any
13 duty, law or rule, without regard to the subsequent discovery or existence of such different or
14 additional facts. The Class Representatives acknowledge that the foregoing waiver was separately
15 bargained for and a key element of the Settlement of which this release is a part. Notwithstanding any
16 other provision of this Stipulation, the Parties recognize that because the only Unknown Claims
17 released by this Stipulation are those Unknown Claims that meet the definition of Released Claims,
18 the release effectuated by this Stipulation will not extend to Unknown Claims other than those
19 described in Paragraph 1.44 above.

20 **3.6 Termination of Settlement; Reasonable Steps to Cure.**

21 3.6.1 In the event that the Settlement is not be approved in its entirety by the Court,
22 or in the event that the Effective Date does not occur, Defendant will have the option to void the
23 Settlement, and in such case, no payments will be made by Defendant to anyone, other than the cost
24 of administration, in accordance with the terms of this Stipulation, and this Stipulation will be deemed
25 null and void with no effect on the Litigation whatsoever. Notwithstanding this provision, the Parties
26 agree to take all reasonable steps to cure any issues cited by the Court as reason for non-approval of
27 any matter(s) filed with the Court for preliminary and final approval.

1 3.6.2 In the event that more than five percent (5%) of the Class Members Opt Out
2 by submitting timely and valid Requests for Exclusion to the Settlement Administrator by the
3 Response Deadline, Defendant will have the right to terminate and void this Settlement; however,
4 Defendant must notify Class Counsel, of its intention to nullify the Settlement in writing by certified
5 mail to David Mara and Matthew Crawford of Mara Law Firm, PC, 2650 Camino Del Rio North,
6 Suite 205, San Diego, CA 92108, within three (3) weeks after the expiration of the Response
7 Deadline.

8 3.6.3 The Maximum Settlement Amount was calculated with, and is premised on,
9 the understanding that there are approximately 230 Class Members and 19,200 workweeks during the
10 time period of October 18, 2015, through January 6, 2022, the date the mediator's proposal was
11 issued. To the extent that either of the forgoing estimates, as represented by Defendant, increases by
12 more than 6%, Defendant will have the option to increase the Maximum Settlement Amount
13 proportionately by the amount exceeding 6%. For example, if the number of workweeks increases by
14 7% then Defendant shall increase the Maximum Settlement Amount by 1%. Likewise, if the number
15 of class members increases by 7% then Defendant shall increase the settlement pot by 1%. If
16 Defendant declines to do so, Plaintiffs will have the option to terminate the settlement in its entirety
17 and the Parties will be returned to their respective positions as if no settlement had been contemplated

18 **3.7 Miscellaneous Provisions.**

19 3.7.1 No Person will have any claim against Class Counsel, the Settlement
20 Administrator, or any of the Released Parties based on the payments made or other actions taken
21 substantially in accordance with the Settlement or further orders of the Court.

22 3.7.2 In the event that the Settlement is not substantially approved by the Court, after
23 all reasonable steps to cure have been exhausted, or the Settlement is terminated, cancelled, declared
24 void, or fails to become effective in accordance with its terms, or if the Judgment does not become
25 final, or to the extent cancellation is otherwise provided for in this Stipulation, the Parties will resume
26 the Litigation at that time as if no Stipulation had been entered. In such event, the terms and provisions
27 of the Stipulation will have no further force and effect with respect to the Parties and will not be used

1 in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by
2 the Court in accordance with the terms of the Stipulation will be treated as vacated. Notwithstanding
3 any other provision of this Stipulation, if the Court should fail to award attorneys' fees to Class
4 Counsel in the full amount provided for in this Stipulation, no order of the Court or modification of
5 any order of the Court concerning the amount of any attorneys' fees to be paid by Defendant to Class
6 Counsel pursuant to this Settlement will constitute grounds for cancellation or termination of the
7 Stipulation or grounds for limiting any other provision of the Judgment. It is agreed that no order of
8 the Court, including any order concerning attorneys' fees, may alter or otherwise increase the
9 Maximum Settlement Amount.

10 3.7.3 The Parties (a) acknowledge that it is their intent to consummate this
11 agreement; (b) agree to cooperate to effectuate and implement all terms and conditions of the
12 Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the
13 Stipulation; (c) agree to seek and to attempt to obtain preliminary and final approval by Court of the
14 Settlement; and (d) agree to reasonably work together to seek and attempt to obtain preliminary and
15 final approval of the Stipulation should the Court not grant approval upon the first presentation.

16 3.7.4 The Parties and attorneys agree to keep the Settlement confidential until the
17 motion for preliminary approval of the Settlement is filed. Thereafter, the Parties will agree to make
18 no comments to the media or otherwise publicize the terms of the Settlement.

19 3.7.5 The Parties agree that they will not engage in making or publishing written
20 statements which are disparaging to the reputation of the other or their corporate parents and affiliates.

21 3.7.6 The Stipulation compromises claims which were contested and the subject of
22 a good faith dispute, and it will not be deemed an admission by any of the Parties as to the merits of
23 any claim or defense. The Parties agree that the amounts paid in settlement of the Litigation and the
24 other terms of the Settlement were negotiated at arms-length and in good faith with sufficient
25 information by the Parties and reflect a settlement that was reached voluntarily after consultation with
26 competent legal counsel.

27 3.7.7 All of the exhibits to the Stipulation and material and integral parts hereof and
28

1 are fully incorporated herein by this reference.

2 3.7.8 The Stipulation may be amended or modified only by a written instrument
3 signed by or on behalf of all Parties or their respective counsel, subject to approval by the Court.

4 3.7.9 The Stipulation constitutes the entire agreement among the Parties hereto and
5 no representations, warranties or inducements have been made to any party concerning the Stipulation
6 or its exhibits other than the representations, warranties and covenants contained and memorialized
7 in such documents. Except as otherwise provided herein, each party will bear its own costs.

8 3.7.10 The Parties understand and acknowledge that: (a) they have performed an
9 independent investigation of the allegations of fact and law made in connection with this Litigation;
10 and (b) even if they may hereafter discover facts in addition to, or different from, those that they now
11 know or believe to be true with respect to the subject matter of the Litigation as reflected in this
12 Settlement Agreement, that will not affect or in any respect limit the binding nature of this Settlement
13 Agreement. It is the Parties' intention to resolve their disputes in connection with this Litigation
14 pursuant to the terms of this Settlement Agreement and thus, in furtherance of their intentions, the
15 Settlement Agreement will remain in full force and effect notwithstanding the discovery of any
16 additional facts or law, or changes in law, and this Settlement will not be subject to rescission or
17 modification by reason of any changes or differences in facts or law, subsequently occurring or
18 otherwise.

19 3.7.11 Class Counsel, on behalf of the Class Members, is expressly authorized by the
20 Class Representatives to take all appropriate action required or permitted to be taken by the Class
21 pursuant to the Stipulation to affect its terms and also expressly authorized to enter into any
22 modifications or amendments to the Stipulation.

23 3.7.12 Each counsel or other Person executing the Stipulation or any of its exhibits
24 on behalf of any Parties hereby warrants that such Person has full and express authority to do so.

25 3.7.13 The Stipulation may be executed in one or more counterparts. All executed
26 counterparts and each of them will be deemed to be one and the same instrument. A complete set of
27 executed counterparts will be filed with the Court.

1 3.7.14 The Stipulation will be binding upon, and inure to the benefit of, the successors
2 and assigns of the parties hereto; however, this Stipulation is not designed to and does not create any
3 third-party beneficiaries unless otherwise specifically provided herein.

4 3.7.15 The Court will retain jurisdiction with respect to implementation and
5 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the
6 Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation, in
7 conformity with California Rules of Court, Rule 3.769 and California Civil Procedure Code section
8 664.6.

9 3.7.16 The Stipulation and the exhibits hereto will be considered to have been
10 negotiated, executed and delivered, and to have been wholly performed, in the State of California,
11 and the rights and obligations of the parties to the Stipulation will be construed and enforced in
12 accordance with, and governed by, the internal, substantive laws of the State of California without
13 regard to principles of conflicts of law.

14 3.7.17 The language of all parts of this Stipulation will in all cases be construed as a
15 whole, according to its fair meaning, and not strictly for or against either party. No party will be
16 deemed the drafter of this Stipulation. The Parties acknowledge that the terms of the Stipulation are
17 contractual and are the product of negotiations between the parties and their counsel. Each party and
18 their/its counsel cooperated in the drafting and preparation of the Stipulation. In any construction to
19 be made of the Stipulation, the Stipulation will not be construed against any party and the canon of
20 contract interpretation set forth in California Civil Code § 1654 will not be applied.

21 3.7.18 Should any deadlines set forth in the Stipulation require any action to be taken
22 on a weekend or a Court holiday, then the action may be taken on the next business day, unless
23 otherwise specified by law or rule of Court, except that should the Response Deadline (or extension(s)
24 thereof specified in the Stipulation relating to a deficiency notice or a re-mailing) fall on a Saturday
25 and regular U.S. Mail service is in operation that day, then no further extension pursuant to this
26 paragraph will apply to these specific deadlines.

27 *[signatures on the following page]*

DATED: 3/17/2022 | 7:39:27 PM PDT, 2022

DocuSigned by:
By: Eddie Escamilla
Plaintiff Eddie Escamilla

DATED: 3/18/2022 | 2:37:54 PM PDT, 2022

DocuSigned by:
By: GK
Plaintiff Gustavo Escamilla

DATED: 3/18/2022 | 2:55:13 PM PDT, 2022

DocuSigned by:
By: AE
Plaintiff Arturo Escamilla

DATED: _____, 2022

By: _____
on behalf of Defendant

DATED: March 18, 2022

By: 
David Mara
Matthew Crawford
Mara Law Firm, PC
Attorneys for Plaintiffs

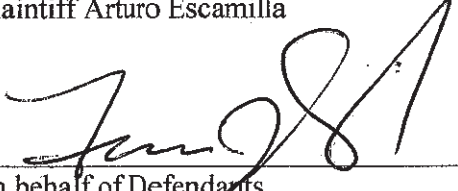
DATED: _____, 2022

By: _____
Joshua Carlon
Lewis Brisbois Bisgaard & Smith LLP
Attorneys for Defendant

1
2 DATED: _____, 2022 By: _____
3 Plaintiff Eddie Escamilla

4
5 DATED: _____, 2021 By: _____
6 Plaintiff Gustavo Escamilla

7
8 DATED: _____, 2022 By: _____
9 Plaintiff Arturo Escamilla

10 DATED: 3/18, 2022 By: 
11 on behalf of Defendants

12
13 DATED: _____, 2022 By: _____
14 David Mara
15 Matthew Crawford
16 **Mara Law Firm, PC**
17 Attorneys for Plaintiffs

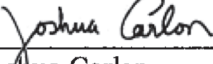
18 DATED: March 18, 2022 By: 
19 Joshua Carlon
20 **Lewis Brisbois Bisgaard & Smith LLP**
21 Attorneys for Defendant

Exhibit 1

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

The California Superior Court, County of San Bernardino has granted preliminary approval to a proposed settlement ("Settlement") of *Eddie Escamilla, Gustavo Escamilla, and Arturo Escamilla vs. Keystone Freight Corp. and National Retail Transportation, Inc.* Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes (collectively these individuals are referred to as the "Class" or "Class Members"):

Any and all persons that performed work for Defendants National Retail Transportation, Inc. or Keystone Freight Corp. (collectively "Defendant") in California pursuant to owner-operator agreements ("Direct Contractors") and/or pursuant to being hired by Direct Contractors to perform the work under the owner-operator agreements without being a party to the agreements ("Secondaries") during the time period of October 18, 2015, through April 11, 2022.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 2
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1. *Why Have I Received This Notice?*

Defendant's records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Class Claims, as described below, during the Class Period.

A Preliminary Approval Hearing was held on [INSERT], in the California Superior Court, County of San Bernardino. The Court conditionally certified the Classes for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [DATE], 2022 at [TIME a.m./p.m.], located at 247 W 3rd Street, San Bernardino, CA 92415. The Final Approval Hearing may be continued without further notice to the Class Members. You are advised to check the Court's website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

2. *What Is This Case About?*

The Class Action filed by Plaintiffs Eddie Escamilla, Gustavo Escamilla, and Arturo Escamilla, alleges causes of action against Defendant on behalf of Plaintiffs and those similarly situated for (1) Failure to Pay All Wages; (2) Failure to Provide Meal Periods; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Reimburse Business Expenses; (5) Failure to Furnish Accurate Wage Statements; (6) Waiting Time Penalties; (7) Violation of Unfair Competition Law; and (8) Violations of the Private Attorneys General Act, Labor Code §2699, et seq. ("PAGA").

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiffs or to the Class.

3. *Am I A Class Member? Am I A PAGA Employee?*

You are a Class Member if you performed work for Defendant in the State of California pursuant to owner-operator agreements ("Direct Contractors") and/or pursuant to being hired by Direct Contractors to perform the work under the owner-operator agreements without being a party to the agreements ("Secondaries") during the time period of October 18, 2015, through April 11, 2022.

If you worked for Defendant in the State of California as a Direct Contractor or Secondary during the time period of October 18, 2018, through April 11, 2022, you are also an "PAGA Employee" under the settlement.

4. *How Does This Class Action Settlement Work?*

In this Action, Plaintiffs sued on behalf of themselves and all other similarly situated individuals as defined in Section 3 above. Plaintiffs and these individuals comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Class Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. *Who Are the Attorneys Representing the Parties?*

The Court has decided that David Mara and Matthew Crawford of Mara Law Firm, PC are qualified as Class Counsel to represent you and all other Class Members simultaneously.

Class Counsel / Attorneys for Plaintiffs	Attorneys for Defendant
MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, CA 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048	LEWIS BRISBOIS BISGAARD & SMITH LLP Joshua D. Carlon 633 W 5th Street, Suite 4000 Los Angeles, California 90071 Telephone: (213) 281-5235 Facsimile: (213) 250-7900

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: *Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.*

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims and Released PAGA Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims and Released PAGA Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendant and the Released Parties for the Released Class Claims. If you are a PAGA Employee, you will receive an Individual PAGA Settlement Payment and be bound by the Released PAGA Claims, even if you opt-out of the settlement.

- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

Class Members may elect to Opt Out of the Settlement and, thus, exclude themselves from the Settlement. Class Members who wish to exercise this option must submit a timely and valid Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state the Class Member’s name, address, telephone number, and the last four digits of the Class Member’s social security number or employee identification number; (b) state the Class Member’s intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than [the Response Deadline]. Class Members who do not Opt Out by submitting valid and timely Requests for Exclusion will be deemed to be Participating Class Members, will be bound by the Settlement and the Judgment entered based thereon.

The proposed settlement includes the settlement of claims for civil penalties under the PAGA. You may not request to be excluded from the settlement of a PAGA claim. Thus, if the court approves of the settlement, even if you request exclusion from the settlement, if you worked during the PAGA Period of October 18, 2018, through April 11, 2022, you will receive an Individual PAGA Settlement Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims.

8. *How Do I Object To The Settlement?*

Class Members who do not Opt Out may object to the Settlement by submitting a written objection to the Settlement Administrator, postmarked no later than the Response Deadline. A written objection to the Settlement must be signed by the Class Member and dated, and additionally state the Class Member’s name, last four (4) digits of his or her Social Security number, dates of employment as a non-exempt or hourly-paid employee of Defendant in California, the case name and number of the Action (*Eddie Escamilla et. al v. Keystone Freight Corp. et. al*, San Bernardino County Superior Court Case No. CIVDS1931366), all legal and factual bases for objection to the Settlement, whether the Class Member intends to appear at the Final Approval Hearing, and whether the Class Member is represented by legal counsel (and if so, identifying the legal counsel and providing said legal counsel’s mailing address).

Alternatively, Class Members may choose to voice their objections at the Final Approval Hearing. A Class Member who objects to the Settlement will still be considered a Participating Class Member who is subject to the Settlement.

9. How Does This Settlement Affect My Rights? What are the Released Claims?

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will release Defendant and the Released Parties¹ from the Released Class Claims. The Released Class Claims are:

All claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class Members' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint, including claims of failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or associated premiums, failure to provide wage statements, failure to provide compliant rest periods and/or associated premiums, failure to pay wages timely at termination, failure to reimburse for business expenses, unfair competition, and violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 the applicable Wage Order of the Industrial Wage Commission, and California Business & Professions Code §§ 17200 to 17208, including without limitation all related claims for restitution and other equitable relief arising from California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys' fees or litigation costs, and any other related claims and/or penalties. The release does not extend to any claims not alleged in the operative Class Action Complaint and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including but not limited to those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment. This release does not include any of the claims encompassed within the Released PAGA Claims (as defined below).

If you are a PAGA Employee, you will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims, even if you opt-out of the settlement. The Released PAGA Claims are:

All claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for civil penalties pursuant to PAGA, that accrued during the PAGA Period, and as a result of PAGA employees' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint and the forthcoming notice to the LWDA, including claims of failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or associated premiums, failure to provide wage statements, failure to provide compliant rest periods

¹ "Released Parties" means Defendants National Retail Transportation, Inc. and Keystone Freight Corp. and each of their parent companies, subsidiaries, affiliates, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

and/or associated premiums, failure to pay wages timely at termination, failure to reimburse for business expenses, and violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Wage Order of the Industrial Wage Commission. The release does not extend to any claims not alleged in the operative Class Action Complaint and the forthcoming notice to the LWDA.

10. *How Much Can I Expect To Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$1,500,000 (“Maximum Settlement Amount” or “MSA”).

The “Net Settlement Amount” or “NSA” means the portion of the MSA, available for distribution to Class Members after the deduction of (1) the Class Representative Service Awards to Plaintiffs Eddie Escamilla and Gustavo Escamilla in an amount up to \$10,000 each, and to Plaintiff Arturo Escamilla in an amount up to \$5,000, for prosecution of the Action, risks undertaken for the payment of attorneys’ fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$15,000; (3) a payment of \$75,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$500,000 (33 1/3% of the Maximum Settlement Amount) for attorneys’ fees and an amount not to exceed \$20,000 for litigation costs. All of these payments are subject to court approval.

The portion of the Maximum Settlement Amount which is allocated to the compromise and release of Plaintiffs’ claims in for PAGA Penalties is Seventy-Five Thousand Dollars (\$75,000). Of this \$75,000, 75%, or \$56,250, will be paid to the Labor and Workforce Development Agency (“LWDA”), and the remaining 25%, or \$18,750, will be distributed to the PAGA Employees (the “Individual PAGA Settlement Payment”).

A. How Will Settlement Payments Be Calculated?

Individual Class Settlement Shares to Class Members: For each Participating Class Member, the Participating Class Member’s Individual Class Workweeks will be divided by the total number of Participating Class Member Workweeks. The resulting number will then be multiplied by the Net Settlement Amount. For Class Members who were Direct Contractors, the Individual Class Workweeks means six times the number of workweeks that the Direct Contractor worked for Defendant during the Class Period; for Class Members that were Secondaries, this term means the number of workweeks the Secondary worked for Defendant during the Class Period.

Individual PAGA Settlement Payments to PAGA Employees: For each PAGA Employee, the PAGA Employee’s Individual PAGA Workweeks will be divided by the total number of PAGA Employees Workweeks. The resulting number will then be multiplied by \$18,750 (25% of the \$75,000 to be paid in settlement of the PAGA claims in the Litigation). For PAGA Employees who were Direct Contractors, the Individual PAGA Workweeks means six times the number of workweeks that the Direct Contractor worked for Defendant during the PAGA Period; for PAGA Employees that were Secondaries, this term means the number of workweeks the Secondary worked for Defendant during the PAGA Period.

One day worked in a given week will be credited as a week for purposes of these calculations. Therefore, the value of each Class Member’s and/or PAGA Employee’s Settlement payment ties directly to the amount of weeks that he or she worked.

B. How Will My Settlement Payment Be Taxed?

Each Class Member's Individual Class Settlement Share will be apportioned as follows: 25% wages and 75% interest and penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Defendant shall pay the employer portion of all such tax withholdings on the Individual Class Settlement Share amounts paid as wages separate from, and in addition to, the Maximum Settlement Amount. The Individual Settlement Share amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the employee share of payroll tax withholdings shall be withheld from each Settlement Class Member's Individual Class Settlement Share.

Each PAGA Employee's Individual PAGA Settlement Payment will be apportioned as follows: 100% penalties. The Individual PAGA Settlement Payment amounts shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund.

C. What Is My Settlement Payment?

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class List which shows you worked [REDACTED] workweeks during the Class Period.

If you are also a PAGA Employee, you will receive a share of \$18,750 (25% of the \$75,000 to be paid in settlement of the PAGA claims in the Litigation). Based upon the calculation above, your approximate share is as follows: \$ [REDACTED]. This is based on the Class List which shows you worked [REDACTED] workweeks during the PAGA Period.

Checks issued to Settlement Class Members and Aggrieved Employees shall be valid for 180 days. After this 180 the remaining funds from any uncashed checks shall be submitted to the State Controller Unclaimed Property Fund in the name of the Class Member and/or PAGA Employee for whom the funds are designated.

11. How Do I Get More Information About The Case Or The Settlement?

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Keystone and NRT Class Action Settlement.

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 247 W 3rd Street, San Bernardino, CA 92415 or at the Settlement Administrator's Website: [REDACTED]. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the Settlement documents or case documents free of charge. You can also visit the Court's website at <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Click the "Accept" button at the bottom of the screen, then click "Click here to access the Portal (Classic)." Click the "Smart Search" button, then enter the case number CIVDS1931366.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

Exhibit 2

David Mara, Esq. (230498)
Matthew Crawford, Esq. (310230)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 205
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for Plaintiffs EDDIE ESCAMILLA,
GUSTAVO ESCAMILLA, and ARTURO
ESCAMILLA, on behalf of themselves, all others
similarly situated and on behalf of the general public.

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

EDDIE ESCAMILLA, GUSTAVO
ESCAMILLA, and ARTURO
ESCAMILLA on behalf of themselves, all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

KEYSTONE FREIGHT CORP.;
NATIONAL RETAIL
TRANSPORTATION, INC.; and DOES 2-
100,

Defendants.

Case No. CIVDS1931366

**PLAINTIFFS' SECOND AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;**
- 2) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8 § 11090);**
- 3) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090);**
- 4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);**
- 5) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§201-203);**
- 6) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11090(8));**
- 7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and**
- 8) Violations of the Labor Code Private Attorneys General Act of 2004 ("PAGA") (Lab. Code §§ 2698 et seq.).**

DEMAND FOR JURY TRIAL

1 Plaintiffs EDDIE ESCAMILLA, GUSTAVO ESCAMILLA, and ARTURO ESCAMILLA, on
2 behalf of themselves, all others similarly situated, and on behalf of the general public, complain of
3 Defendants KEYSTONE FREIGHT CORP. and NATIONAL RETAIL TRANSPORTATION,
4 INC. and/or DOES and for causes of action and alleges:

5 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf
6 of Plaintiffs, EDDIE ESCAMILLA, GUSTAVO ESCAMILLA, ARTURO ESCAMILLA,
7 and all non-exempt, truck workers, truck drivers, drivers, or similar job designations
8 (“Plaintiffs”) who are presently or formerly employed by KEYSTONE FREIGHT CORP.
9 and NATIONAL RETAIL TRANSPORTATION, INC. and/or DOES and/or their
10 subsidiaries or affiliated companies and/or predecessors within the State of California
11 (“Defendants”), and who Defendants misclassify as independent contractors.

12 2. By misclassifying Plaintiffs as independent contractors Defendants have sought to avoid
13 their legal obligations as “employer” of Plaintiffs under the California Labor Code.
14 Pursuant to their misclassification of Plaintiffs, Defendants have sought to avoid and have
15 violated their duty to provide meal and rest periods and pay all wages owed for all hours
16 worked. Defendants misclassification regime has also resulted in Plaintiffs having to
17 shoulder the burden of paying massive amounts of business expenses that, as the employer,
18 Defendants would otherwise be obligated to pay. For instance, under Defendants’
19 misclassification scheme, Plaintiffs must pay substantial sums for various forms of
20 insurance coverage, vehicle maintenance, operation and damage costs, fuel, and other
21 business-related expenses that, as the legal employer, Defendants are obligated to pay
22 and/or reimburse Plaintiffs for.

23 3. Defendants may not lawfully avoid these legal obligations by labeling workers like
24 Plaintiffs as “independent contractor,” when the nature of that engagement is an
25 employment one.

26 4. At all times mentioned herein, the common policies and practices of Defendants and/or
27 DOES were a direct cause of Defendants’ and/or DOES’ failure to comply with
28 California’s wage and hours laws, Wage Orders, and/or the California Labor Code, as set

1 forth more fully within.

2 5. For at least four (4) years prior to the filing of this action and through to the present,
3 Defendants and/or DOES have had a consistent policy and/or practice of not paying
4 Plaintiffs and Driver Class Members for all of the hours they worked.

5 6. Due to its misclassification scheme, Defendants have not provided Plaintiffs with meal
6 and/or rest periods. Defendants do not have policies that provide Plaintiffs with meal
7 periods that comply with California law. Under the umbrella of their misclassification
8 scheme, Defendant fails to provide meal and rest breaks wherein Plaintiffs are relieved of
9 all control and duty for thirty-minutes (meal periods) and ten-minutes (rest periods). Also
10 motivated by their misclassification of Plaintiffs, Defendants do not pay Plaintiffs one
11 hours' pay at the Plaintiffs regular rate of pay for each day Defendant does not provide a
12 meal and/or a rest period in accordance with California law.

13 7. For at least four (4) years prior to the filing of this action and through to the present,
14 Defendants and/or DOES and/or their officers and/or managing agents have had a
15 consistent policy and/or practice of willfully failing to provide to Plaintiffs and Driver
16 Class Members, accurate itemized employee wage statements.

17 8. For at least four (4) years prior to the filing of this action and through to the present,
18 Defendants and/or DOES and/or their officers and/or managing agents have had a
19 consistent policy and/or practice of willfully failing to timely pay wages owed to Plaintiffs
20 and those Driver Class Members who left Defendants and/or DOES employ or who were
21 terminated.

22 9. For at least four (4) years prior to the filing of this action and through to the present,
23 Defendants and/or DOES, by failing to lawfully pay Plaintiffs and those similarly situated
24 all the wages they are owed, engaged in false, unfair, fraudulent and deceptive business
25 practices within the meaning of the Business and Professions Code section 17200, et seq.

26 10. Throughout the statutory period, Defendants' and/or DOES' employees, including
27 Plaintiffs and similarly situated Driver Class Members, were not provided all straight time
28 wages owed, meal periods and rest periods, or compensation in lieu thereof, as mandated

under the California Labor Code, and the implementing rules and regulations of the Industrial Welfare Commissions (“IWC”) California Wage Orders.

11. Defendants and/or DOES are and were aware that Plaintiffs and members of the proposed class were not paid all straight time and overtime wages owed, nor provided meal and rest periods. Defendants’ and/or DOES’ denial of wages and other compensation due to Plaintiffs and members of the proposed class was willful and deliberate.

I. VENUE

12. Venue as to each Defendant, KEYSTONE FREIGHT CORP., NATIONAL RETAIL TRANSPORTATION, INC. and/or DOES, is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants and/or DOES conduct business and commit Labor Code violations within San Bernardino County, and each Defendant and/or DOE is within California for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated within the State of California and within San Bernardino County. Defendants and/or DOES employ numerous Class members who work in San Bernardino County, in California.

II. PARTIES

A. Plaintiff.

13. At all relevant times, herein, Plaintiffs are and were residents of California. Plaintiffs were employed by Defendants and/or DOES within the last four (4) years as a truck driver who contracted with Defendants in California and performed work in California. Plaintiffs sue on behalf of themselves and all other drivers who contracted with Defendants in California and performed work in California at any time within the four-year period of time that precedes the filing of this complaint to the present and ongoing.

14. Plaintiffs performed work for Defendants in the state of California and within the county of San Bernardino during the period of the relevant statute of limitations.

B. Defendants.

15. Defendants and/or DOES operate trucks, industrial trucks, industrial vehicles, and/or industrial work sites, and, at all times during the liability period, have conducted business

1 as a third-party logistics company, servicing customers in San Bernardino County and
2 elsewhere within California.

3 16. Despite misclassifying drivers as independent contractors, Defendants were the employers
4 of Plaintiffs and the classes they seek to represent. Plaintiffs and those similarly situated
5 drivers work under the control and direction of Defendants in connection with the
6 performance of work, both under the contract for hire for the performance of work and for
7 the performance of work in fact. Plaintiffs and those similarly situated drivers do not
8 perform work that is outside Defendants' usual course of business, and Defendants retain
9 the right to control Plaintiff and the Class' work details. The work performed by Plaintiffs
10 and those similarly situated constitute the integral, if not the essential, part of Defendants'
11 business. As such, Defendants are the employers of Plaintiffs and those similarly situated
12 and owes the statutory protections the California Labor Code affords employees, such as
13 the right to compliant meal and rest periods, the payment of wages for all hours worked,
14 and reimbursement of all business related expenses.

15 17. Defendants retain the right to control the manner and means of accomplishing the desired
16 result of hauling merchandise to Defendants' customers.

17 18. Defendants, not Plaintiffs or the Driver Class, set the prices for its loads.

18 19. Defendants, not Plaintiffs or the Driver Class, set the duration of time the contract for hire
19 is to be in effect.

20 20. Plaintiff and the Driver Class haul to Defendants' customers.

21 21. Defendants' and/or DOES' principal place of business is in the State of California.

22 22. The true names and capacities, whether individual, corporate, associate, or otherwise, of
23 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues
24 these Defendants by such fictitious names under Code of Civil Procedure section 474.
25 Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
26 designated herein as a DOE is legally responsible in some manner for the unlawful acts
27 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
28 true names and capacities of the Defendants designated hereinafter as DOES when such

1 identities become known.

2 23. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or
3 DOE acted in all respects pertinent to this action as the agent of the other Defendant and/or
4 DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
5 and the acts of each Defendant and/or DOES are legally attributable to the other Defendants
6 and/or DOES.

7 **III. CLASS ACTION ALLEGATIONS**

8 24. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a
9 class action pursuant to section 382 of the California Code of Civil Procedure. Plaintiffs
10 seek to represent a Class composed of and defined as follows:

11
12 All persons who contracted with Defendants in the State of
13 California and who performed work for Defendants in the state of
14 California during the period of the relevant statute of limitations.
15 (“Driver Class Members”)

16
17 Plaintiffs also seek to represent the following Subclasses composed of and defined as
18 follows:

19
20 All Driver Class Members who worked one (1) or more shifts in
21 excess of five (5) hours.

22
23 All Driver Class Members who worked one (1) or more shifts in
24 excess of six (6) hours.

25
26 All Driver Class Members who worked one (1) or more shifts in
27 excess of eight (8) hours.
28

1 All Driver Class Members who worked one (1) or more shifts in
2 excess of ten (10) hours.

3
4 All Driver Class Members who worked one (1) or more shifts in
5 excess of twelve (12) hours.

6
7 All Driver Class Members who worked one (1) or more shifts in
8 excess of two (2) hours.

9
10 All Driver Class Members who worked one (1) or more shifts in
11 excess of three (3) hour and one-half hours, but less than or equal to
12 six (6) hours.

13
14 All Driver Class Members who worked one (1) or more shifts in
15 excess of six (6) hours, but less than or equal to ten (10) hours.

16
17 All Driver Class Members who had to incur business expenses and
18 were not reimbursed.

19 25. Plaintiffs reserve the right under rule 1855, subdivision (b), California Rules of Court, to
20 amend or modify the Class description with greater specificity or further division into
21 subclasses or limitation to particular issues.

22 26. This action has been brought and may properly be maintained as a class action under the
23 provisions of section 382 of the California Code of Civil Procedure because there is a well-
24 defined community of interest in the litigation and the proposed Class is easily
25 ascertainable.

26 **A. Numerosity.**

27 27. The potential members of the Class and Subclasses as defined are so numerous that joinder
28 of all the members of the Classes is impracticable. While the precise number of Class

Members and Subclass Members have not been determined at this time, Plaintiffs are informed and believes that Defendants and/or DOES employed during the liability period over 100 (100) Class Member Drivers in California during the relevant period of the statute of limitations.

28. Upon information and belief, Plaintiffs allege Defendants' and/or DOES' records will provide information as to the number and location of all Class members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

29. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation:

(1) Whether Defendants and/or DOES violated the Labor Code and/or applicable IWC Wage Orders in failing to pay Driver Class Members all earned wages at the regular rate for all hours worked.

(2) Whether Defendants and/or DOES violated Labor Code section 226.7, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and/or California Code of Regulations, Title 8, section 11090, by failing to authorize, permit, and/or provide rest periods to Driver Class Members for every four (4) hours or major fraction thereof worked and/or failing to pay said Driver Class Members one (1) hour of pay at their regular rate of compensation for each work day that the rest period was not authorized, permitted and/or provided.

(3) Whether Defendants and/or DOES violated Labor Code section 226.7, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and/or California Labor Code section 512 and 226.7 by failing to provide compliant meal periods.

(4) Whether Defendants and/or DOES violated Labor Code section 221 and 2802 by failing to reimburse Driver Class Members for

necessary business expenses they incurred.

(5) Whether Driver Class Members have been misclassified as independent contractors.

(6) Whether Driver Class Members are employees of Defendant.

(7) Whether Driver Class Members are entitled to the protections of the various provisions of the California Labor Code as detailed herein.

(8) Whether Driver Class Members' rights to the protections of the various provisions of the California Labor Code as detailed herein have been violated.

(9) Whether Defendants violated California's Unfair Competition Law for the Labor Code violations detailed of and complained of herein;

30. The answer to each of these respective questions will generate a common answer capable of resolving class-wide liability in one stroke.

31. Said common questions predominate over any individualized issues and/or questions affecting only individual members.

C. Typicality.

32. The claims of the named Plaintiffs are typical of the claims of the proposed classes they seek to represent. Plaintiffs and all members of the proposed class sustained injuries and damages arising out of and caused by Defendants' and/or DOES' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged.

33. Plaintiffs were subjected to the same uniform policies and/or practices complained of herein that affected all such Driver Class Members. Thus, as Plaintiffs were subjected to the same unlawful policies and practices as all Driver Class Members, their claims are typical of the class they seek to represent.

D. Adequacy of Representation.

34. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class.

35. Plaintiffs are ready and willing to take the time necessary to help litigate this case.

36. Plaintiffs have no conflicts that will disallow him to fairly and adequately represent and protect the interests of the members of the Class.

37. Counsel who represents Plaintiffs is competent and experienced in litigating large employment class actions.

38. Specifically, David Mara, Esq., and Matthew Crawford, Esq. are California lawyers in good standing.

39. Mr. Mara frequently authors amicus briefs in important appellate and California Supreme Court cases affecting workers in the State of California, which includes the following California Supreme Court cases: *Augustus v. ABM Security Servs.* (2016) 2 Cal.5th 257 and *Williams v. Superior Court* (decided July 13, 2017), *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004; and *Frlekin v. Apple*, Cal.Sup.Case No. S243805.

40. Mr. Mara has been appointed class counsel in numerous California wage and hour class actions such as this.

41. Mara Law Firm, PC has the resources to take this case to trial and judgment, if necessary.

42. Mara Law Firm, PC has the experience, ability, and ways and means to vigorously prosecute this case.

E. Superiority of Class Action.

43. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' and/or DOES' illegal policies and/or practices of failing to pay all straight time and overtime wages owed, failing to permit or authorize rest periods, failing to provide meal periods, failing to reimburse necessary

business expenses, and violations of California's Unfair Competition Law.

44. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

45. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Failure to Pay All Straight Time Wages at the Statutory Minimum

46. Plaintiffs and those similarly situated Driver Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

47. Defendants and/or DOES have had a continuous policy of not paying Plaintiffs and those similarly situated for all hours worked.

48. Section 1197.1 of the *California Labor Code* states "[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203."

49. Under section 1194 of the California Labor Code, employees paid less than the state minimum wage are entitled to recover all minimum wage owed, plus attorneys' fees and interest.

50. Industrial Welfare Commission Order No. 9-2001 section 4(B) states "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period."

51. Under California Labor Code section 1194.2, an employee receiving less than the state

1 minimum wage, is also entitled to recover liquidated damages in an amount equal to the
2 amount of minimum wage owed.

3 52. Defendants and/or DOES have a continuous and consistent policy of not paying Plaintiffs
4 and those similarly situated for all time worked.

5 53. Defendants and/or DOES compensate employees a flat rate of pay, which, like a salary,
6 does not change based on the amount of hours required to complete the days' work. Thus,
7 like a salary in California for a non-exempt employee, the flat rate cannot be construed to
8 compensate Plaintiffs and the Driver Class Members for any hours worked in excess of
9 eight daily hours or forty hours in a week.

10 54. Despite the fact that Plaintiffs and the Driver Class Members are exempt from overtime
11 under both state and federal law, they are not exempt from being paid the state's minimum
12 hourly wage. Thus, as the flat rate does not compensate for anything, much less minimum
13 wage, for the hours in excess of eight daily and 40 weekly, Defendants do not pay minimum
14 wage for all hours worked.

15 55. In addition, the flat daily rate fails to separately compensate for all tasks, such as loading,
16 unloading, fueling, waiting time, etc. In failing to separately compensate for all hours
17 worked at the statutory minimum wage, Defendants have violated California's minimum
18 wage statute and is therefore liable.

19 56. Due to the fact that Defendants charge Plaintiffs and the Driver Class Members to incur
20 substantial business expenses to carry out their duties, the off-set results in Plaintiffs'
21 hourly wage being less than the statutory minimum wage.

22 57. As a direct result of Defendants' and/or DOES' policy of illegal wage theft, Plaintiffs and
23 those similarly situated have been damaged in an amount to be proven at trial.

24 58. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
25 below.

26 **SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Failure**
27 **to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512,**
28 **IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8, § 11090)**

59. Plaintiffs and those similarly situated Class members hereby incorporate by reference each

1 and every other paragraph in this Complaint herein as if fully plead.

2 60. Under California Labor Code section 512 and IWC Wage Order No. 9, no employer shall
3 employ any person for a work period of more than five (5) hours without providing a meal
4 period of not less than thirty (30) minutes. During this meal periods of not less than thirty
5 (30) minutes, the employee is to be completely free of the employer's control and must not
6 perform any work for the employer. If the employee does perform work for the employer
7 during the thirty (30) minute meal period, the employee has not been provided a meal
8 period in accordance with the law. Also, the employee is to be compensated for any work
9 performed during the thirty (30) minute meal period.

10 61. In addition, an employer may not employ an employee for a work period of more than ten
11 (10) hours per day without providing the employee with another meal period of less than
12 thirty (30) minutes.

13 62. Under California Labor Code section 226.7, if the employer does not provide an employee
14 a meal period in accordance with the above requirements, the employer shall pay the
15 employee one (1) hour of pay at the employee's regular rate of compensation for each
16 workday that the meal period is not provided.

17 63. Hiding behind its misclassification of Plaintiffs and the Driver Class Members as
18 independent contractors, Defendants and/or DOES do not provide thirty (30) minute,
19 uninterrupted meal periods to Driver Class Members who worked for work periods of more
20 than five (5) consecutive hours. As such, Defendants' and/or DOES' non-exempt
21 employees were required to work over five (5) consecutive hours at a time without being
22 provided a thirty (30) minute uninterrupted meal period within that time.

23 64. Defendants and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods
24 to Driver Class Members for every five (5) continuous hours worked.

25 65. In addition, due to its internal pay policies and procedures applicable to Plaintiffs and the
26 Driver Class Members, Defendants' and/or DOES' do not permit duty-free/control-free
27 thirty minute meal periods. Thus, Driver Class Members are not able to take meal periods.

28 66. Failing to provide compensation for such unprovided or improperly provided meal periods,

as alleged above, Defendants and/or DOES willfully violated the provisions of Labor Code sections 226.7, 512, and IWC Wage Order No. 9.

67. As a result of the unlawful acts of Defendants and/or DOES, Plaintiffs and the Class they seek to represent have been deprived of premium wages, in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage Order No. 9-2001. Plaintiffs and the Class they seek to represent did not willfully waive their right to take meal periods through mutual consent with Defendants and/or DOES.

68. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090)

69. Plaintiffs and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein, as if fully plead.

70. Under IWC Wage Order No. 9, every employer shall authorize and permit all employees to take rest periods, "[t]he 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 worked or major fraction thereof." IWC Wage Order 9-2001(12). The time spent on rest periods "shall be counted as hours worked for which there shall be no deduction from wages." *Id.*

71. Under California Labor Code section 226.7, if the employer does not provide an employee a rest period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

72. At all relevant times, Defendants and/or DOES failed to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

73. Hiding behind its misclassification of Plaintiffs and the Driver Class Members as independent contractors, Defendants and/or DOES do not provide ten-minute rest periods

1 to Driver Class Members who worked four hours or a major fraction thereof during the
2 workday.

3 74. In addition, due to its internal pay policies and procedures applicable to Plaintiffs and the
4 Driver Class Members, Defendants and/or DOES do not permit duty-free/control-free ten-
5 minute rest periods. Thus, Driver Class Members are not able to take rest periods.

6 75. Failing to provide compensation for such unprovided or improperly provided rest periods,
7 as alleged above, Defendants and/or DOES willfully violated the provisions of Labor Code
8 sections 226.7 and IWC Wage Order No. 9.

9 76. As a result of the unlawful acts of Defendants and/or DOES, Plaintiffs and the Class they
10 seek to represent have been deprived of premium wages, in amounts to be determined at
11 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,
12 attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage Order No.
13 9-2001. Plaintiffs and the Class they seek to represent did not willfully waive their right to
14 take rest periods through mutual consent with Defendants and/or DOES.

15 77. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
16 below.

17 **FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES:**
18 **Knowing and Intentional Failure to Comply with Itemized Employee Wage**
19 **Statement Provisions (Lab. Code §§ 226, 1174, 1175; IWC Wage Order No. 9; Cal.**
20 **Code Regs., Title 8, § 11040)**

21 78. Plaintiffs and those similarly situated Class members hereby incorporate by reference each
22 and every other paragraph in this Complaint herein as if fully plead.

23 79. Labor Code section 226 subdivision (a) requires Defendants and/or DOES to, inter alia,
24 itemize in wage statements and accurately report the total hours worked and total wages
25 earned. Defendants and/or DOES have knowingly and intentionally failed to comply with
26 Labor Code section 226, subdivision (a), on each and every wage statement provided to
27 Plaintiffs and members of the proposed Class.

28 80. Labor Code section 1174 requires Defendants and/or DOES to maintain and preserve, in a
centralized location, records showing the daily hours worked by and the wages paid to its

1 employees. Defendants and/or DOES have knowingly and intentionally failed to comply
2 with Labor Code section 1174. The failure of Defendants and/or DOES, and each of them,
3 to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

4 81. Defendants and/or DOES failed to maintain accurate time records - as required by IWC
5 Wage Order No. 9-2001(7), and Cal. Code Regs., Title 8 section 11090 - showing, among
6 other things, when the employee begins and ends each work period, the total daily hours
7 worked in itemized wage statements, total wages, bonuses and/or incentives earned, and
8 all deductions made.

9 82. Defendants and/or DOES have knowingly and intentionally failed to provide Plaintiffs and
10 the Class members with accurate itemized wage statements which show: “(1) gross wages
11 earned, (2) total hours worked by the employee, . . . (4) all deductions, provided that all
12 deductions made on written orders of the employee may be aggregated and shown as one
13 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
14 paid, (7) the name of the employee and only the last four digits of his or her social security
15 number or an employee identification number other than a social security number, (8) the
16 name and address of the legal entity that is the employer and, if the employer is a farm
17 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the
18 legal entity that secured the services of the employer, and (9) all applicable hourly rates in
19 effect during the pay period and the corresponding number of hours worked at each hourly
20 rate by the employee[.]” Labor Code section 226(a).

21 83. As a direct result of Defendants’ and/or DOES’ unlawful acts, Plaintiffs and the Class he
22 intends to represent have been damaged and are entitled to recovery of such amounts, plus
23 interest thereon, attorneys’ fees, and costs, pursuant to Labor Code section 226.

24 84. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
25 below.

26 **FIFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Failure to**
27 **Pay All Wages Due at the Time of Termination from Employment (Lab. Code §§ 201-**
28 **203)**

85. Plaintiffs and those similarly situated Class members hereby incorporate by reference each

1 and every other paragraph in this Complaint herein as if fully plead.

2 86. Plaintiffs terminated their employment with Defendants and/or DOES.

3 87. Whether Plaintiffs voluntarily or involuntarily terminated their employment with
4 Defendants and/or DOES, Defendants and/or DOES did not timely pay them straight time
5 wages owed at the time of his termination.

6 88. Whether Plaintiffs voluntarily or involuntarily terminated their employment with
7 Defendants and/or DOES, Defendants and/or DOES did not timely pay them meal and/or
8 rest period premiums owed at the time of their termination.

9 89. Numerous members of the Class are no longer employed by Defendants and/or DOES.
10 They were either fired or quit Defendants' and/or DOES' employ. Defendants and/or
11 DOES did not pay all timely wages owed at the time of their termination. Defendants and/or
12 DOES did not pay all premium wages owed at the time of their termination.

13 90. Labor Code section 203 provides that, if an employer willfully fails to pay, without
14 abatement or reduction, in accordance with Labor Code sections 201, 201.5, 202 and 205.5,
15 any wages of an employee who is discharged or who quits, the wages of the employee shall
16 continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or
17 until an action therefore is commenced.

18 91. Defendants and/or DOES failed to pay Plaintiffs a sum certain at the time of their
19 termination or within seventy-two (72) hours of his resignation, and have failed to pay
20 those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code section
21 203, Plaintiffs are entitled to a penalty in the amount of their daily wage, multiplied by
22 thirty (30) days.

23 92. When Plaintiffs and those members of the Class who are former employees of Defendants
24 and/or DOES separated from Defendants' and/or DOES' employ, Defendants and/or
25 DOES willfully failed to pay all straight time wages, meal period premiums, and/or rest
26 period premiums owed at the time of termination.

27 93. Defendants' and/or DOES' failure to pay said wages to Plaintiffs and members of the Class
28 they seek to represent, was willful in that Defendants and/or DOES and each of them knew

1 the wages to be due, but failed to pay them.

2 94. As a consequence of Defendants' and/or DOES' willful conduct in not paying wages owed
3 at the time of separation from employment, Plaintiffs and members of the proposed Class
4 are entitled to thirty (30) days' worth of wages as a penalty under Labor Code section 203,
5 together with interest thereon and attorneys' fees and costs.

6 95. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
7 below.

8 **SIXTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES:**
9 **Reimbursement of Business Expenses (Cal. Lab. Code § 2802)**

10 96. Plaintiffs and those similarly situated Class members hereby incorporate by reference each
11 and every other paragraph in this Complaint herein as if fully plead.

12 97. California Labor Code section 2802 provides: "An employer shall indemnify his or her
13 employees for all necessary expenditures or losses incurred by the employee in direct
14 consequence of the discharge of his or her duties, or of his or her obedience to the directions
15 of the employer...[which includes] all reasonable costs, including, but not limited to,
16 attorneys' fees incurred by the employee enforcing the rights granted by this section."

17 98. As a direct consequence of discharging their duties for Defendants and/or obeying
18 Defendants' directions, Plaintiffs and the Driver Class Members have necessarily incurred
19 expenses for which they have not been indemnified by Defendants, including the purchase
20 and/or lease and depreciation of vehicles; fuel, maintenance, and other vehicle operating
21 costs; deferral of wages into damage escrow accounts; various forms of insurance; costs
22 associated with lost or damaged merchandise and other property damage; certain tools and
23 equipment Defendants have required Plaintiffs and Driver Class Members to purchase or
24 rent from Defendants' clients; other miscellaneous equipment including moving pads and
25 blankets, dollies, hand tools, installation supplies, GPS navigational equipment, and
26 cellular telephones; fees for payroll administration services; expenses associated with a
27 cash bond or fund Defendants require Plaintiffs and Driver Class Members to maintain;
28 and attorneys' fees incurred to enforce Plaintiffs' and the Driver Class Members' rights
under Labor Code section 2802.

1 99. Defendants have failed to indemnify or in any manner reimburse Plaintiffs and Driver Class
2 Members for these expenditures and losses.

3 100. By requiring Plaintiffs and the Driver Class Members to pay expenses and cover losses that
4 they incurred in direct consequence of the discharge of their duties for Defendants and/or
5 in obedience of Defendants' direction, Defendants have violated and continues to violate
6 Cal. Labor Code section 2802.

7 101. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Driver Class
8 Members have suffered substantial losses according to proof, as well as pre-judgment
9 interest, costs, and attorneys' fees for the prosecution of this action, which losses are
10 compensable under Labor Code section 2802.

11 102. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
12 below.

13 **SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES:**
Violation of Unfair Competition (California Bus. & Prof. Code, § 17200, et seq.)

14 103. Plaintiffs and those similarly situated Class members hereby incorporate by reference each
15 and every other paragraph in this Complaint herein as if fully plead.

16 104. Defendants and/or DOES failure to pay all straight time wages earned for all hours worked,
17 failure to provide compliant meal and/or rest breaks and/or compensation in lieu thereof,
18 and failure to provide reimbursement for necessary business expenses is prohibited by
19 California Business and Professions Code section 17200, et seq.

20 105. The actions of Defendants and/or DOES in failing to pay Plaintiffs and members of the
21 proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent
22 and deceptive business practices, within the meaning of California Business and
23 Professions Code section 17200, et seq.

24 106. Plaintiffs are entitled to an injunction and other equitable relief against such unlawful
25 practices in order to prevent future damage, for which there is no adequate remedy at law,
26 and to avoid a multiplicity of lawsuits. Plaintiffs bring this cause individually and as
27 members of the general public actually harmed and as a representative of all others subject
28 to Defendants and/or DOES unlawful acts and practices.

1 107. As a result of their unlawful acts, Defendants and/or DOES have reaped and continue to
2 reap unfair benefits at the expense of Plaintiffs and the proposed Class they seek to
3 represent. Defendants and/or DOES should be enjoined from this activity and made to
4 disgorge these ill-gotten gains and restore Plaintiffs and the members of the proposed Class
5 pursuant to Business and Professions Code section 17203. Plaintiffs are informed and
6 believe, and thereon alleges, that Defendants and/or DOES are unjustly enriched through
7 their policy of not all wages owed to Plaintiffs and members of the proposed Class.

8 108. Plaintiffs are informed and believe, and thereon alleges, that Plaintiffs and members of the
9 proposed class are prejudiced by Defendants' and/or DOES' unfair trade practices.

10 109. As a direct and proximate result of the unfair business practices of Defendants and/or
11 DOES, and each of them, Plaintiffs, individually and on behalf of all employees similarly
12 situated, are entitled to equitable and injunctive relief, including full restitution and/or
13 disgorgement of all wages and premium pay which have been unlawfully withheld from
14 Plaintiffs and members of the proposed Class as a result of the business acts and practices
15 described herein and enjoining Defendants and/or DOES from engaging in the practices
16 described herein.

17 110. The illegal conduct alleged herein is continuing, and there is no indication that Defendants
18 and/or DOES will cease and desist from such activity in the future. Plaintiffs alleges that
19 Defendants and/or DOES are not enjoined from the conduct set forth in this Complaint,
20 they will continue the unlawful activity discussed herein.

21 111. Plaintiffs further requests that the Court issue a preliminary and permanent injunction
22 prohibiting Defendants and/or DOES from continuing to not pay Plaintiffs and the
23 members of the proposed Class wages as discussed herein.

24 112. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
25 below.

26 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES:**
27 **Violations of the Private Attorneys General Act of 2004 ("PAGA") (Labor Code**
28 **§2698 et seq.)**

113. Plaintiffs and those similarly situated Class members hereby incorporate by reference each

and every other paragraph in this Complaint herein as if fully plead.

114. On or about February 16, 2022, a Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3 was filed with the Labor and Workforce Development Agency (“LWDA”) by Plaintiffs. To date, the LWDA has not provided a response indicating that it will be taking action in response to the Notice.

115. Plaintiffs, by virtue of their employment with Defendants, and Defendants’ failure to provide meal and rest periods, all wages for all work performed at the statutory minimum agreed upon rate, accurate itemized wage statements, all wages due at termination, and reimburse business expenses, are aggrieved employees with standing to bring an action under the Private Attorney General Act (“PAGA”). Plaintiffs, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in Labor Code Section 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: Sections 201 through 203, 204, 205.5, 221, 222, 223, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2802.

116. Plaintiffs are informed and believes that Defendants have violated and continue to violate provisions of the California Labor Code and applicable Wage Orders related to meal and rest periods, wages for all work performed, itemized wage statements, all wages due at termination, and reimbursement for expenses incurred during employment.

117. Plaintiffs, as personal representatives of the general public, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the statutory period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California and the Labor and Workforce Development Agency (LWDA).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- 1 A. That the Court determine that this action may be maintained as a class action;
- 2 B. For compensatory damages, in an amount according to proof at trial, with interest
- 3 thereon;
- 4 C. For economic and/or special damages in an amount according to proof with interest
- 5 thereon;
- 6 D. For unpaid straight time wages, in an amount according to proof at trial, with interest
- 7 thereon;
- 8 E. For compensation for all time worked;
- 9 F. For compensation for not being provided paid rest breaks;
- 10 G. For compensation for not being provided paid meal periods;
- 11 H. For damages and/or monies owed for failure to comply with itemized employee wage
- 12 statement provisions;
- 13 I. For all waiting time penalties owed;
- 14 J. For business expense reimbursements incurred;
- 15 K. That Defendants be found to have engaged in unfair competition in violation of sections
- 16 17200 et seq. of the California Business and Professions Code;
- 17 L. That Defendants be ordered and enjoined to make restitution to the Class due to their
- 18 unfair competition, including disgorgement of their wrongfully withheld wages
- 19 pursuant to California Business and Professions Code sections 17203 and 17204;
- 20 M. That an order of specific performance of all penalties owed be issued under Business
- 21 and Professions Code sections 17202;
- 22 N. That Defendants be enjoined from continuing the illegal course of conduct, alleged
- 23 herein;
- 24 O. That Defendants further be enjoined to cease and desist from unfair competition in
- 25 violation of section 17200 et seq. of the California Business and Professions Code;
- 26 P. That Defendants be enjoined from further acts of restraint of trade or unfair
- 27 competition;
- 28 Q. For penalties for each violation of the Labor Code Private Attorneys General Act of

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