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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

WILLIAM MITTIE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

CARRY TRANSIT, LLC, a Delaware
Limited Liability Company; HENIFF
TRANSPORTATION SYSTEMS, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: 22CV008178

*[Assigned to Hon. Evelio Grillo, Dept. 21, for
all purposes]*

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

Hearing

Date: April 23, 2024

Time: 1:30 p.m.

Dept.: 21

Complaint filed: March 9, 2022

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I manage the employment department within my firm where I am also a Partner. I
4 represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge
5 of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for
6 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
7 competently testify thereto.

8 **COUNSEL'S EXPERIENCE**

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

13 3. I have handled well over 500 employee vs. employer litigation matters during my
14 23 years in practice. Over the last 16 years, my practice has almost entirely consisted of
15 representing employees, the majority of which has included class action and representative
16 action wage and hour matters. In total, I have handled well over 250 class action and
17 representative action wage/hour cases, and have been appointed by the court as class counsel and
18 have received final court approval and judgment in close to half of those actions to date, and
19 anticipate receiving final approval in many more of those in the future.

20 4. As part of these settlements and judgments, I have recovered in excess of \$250
21 million in damages for my clients and the class members (who often work as nurses, ambulance
22 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
23 countless other trades). My team and I once held the record for the largest PAGA-only case in
24 California's history - a \$12.5 million-dollar court approved settlement, which followed extensive
25 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
26 company (*Garcia v. Macy's*, San Bernardino Superior Court).

27 5. I have tried two major class and PAGA cases against Fortune 100 companies over
28 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County

1 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
2 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
3 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
4 the PAGA case was reversed and remanded.

5 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
6 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
7 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
8 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
9 only 5% of lawyers receive.

10 **BRIEF SUMMARY OF THE SETTLEMENT**

11 7. Following a contested but productive mediation, Plaintiff and Defendant
12 (collectively, the “Parties”) entered into a Class Action and PAGA Settlement Agreement and
13 Release of Claims resolving the wage and hour claims of the putative class (the “Settlement
14 Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**. The Settlement Agreement
15 seeks to release and discharge Defendant from the claims brought against it in exchange for
16 Defendant’s agreement to pay \$425,000 on a non-reversionary, non-claims made basis (each
17 Class Member will receive his/her share of the Net Settlement Amount without having to
18 submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to
19 represent a class of all current and former non-exempt employees employed by Defendant
20 Carry Transit, LLC in California at any time during the Class Period of March 9, 2018, through
21 January 10, 2024. Under the terms of the Settlement Agreement, Defendant will not oppose
22 Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of
23 the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement
24 administrator costs of \$5,000, PAGA Penalties of \$42,500 of which \$31,875 will be paid to the
25 LWDA and the remaining \$10,625 will be paid to the Aggrieved Employees, and a service
26 award not to exceed \$7,500 to Plaintiff. After subtracting these deductions from the Settlement
27 Amount, approximately \$208,333.34 will be available to pay individual settlement amounts to
28 approximately 47 Class Members who do not opt-out of the settlement, as follows:

Gross Settlement Amount	\$ 425,000.00
Attorneys' Fees (1/3)	\$ 141,666.66
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 5,000.00
PAGA Penalties	\$ 42,500.00
Class Representative Service Award	\$ 7,500.00
Net Settlement Amount	\$ 208,333.34

8. Assuming 47 Class Members, the average payment to each Class Member will be approximately \$4,432.62 (\$208,333.34 / 47). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately \$41.66 (\$208,333.34 / 5,000 estimated Work Weeks)

9. Each Class Member will receive the Class Notice, which is attached hereto as **Exhibit 2**, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class Period.

PROCEDURAL BACKGROUND

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

11. After being retained by Plaintiff, we submitted March 9, 2022, letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit 3**, and simultaneously sent a letter to Defendant requesting the production of Plaintiff's personnel and timekeeping records to further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the right to bring PAGA

1 claims.

2 12. That same day, we filed a putative class action against Defendant for (1) failure to
3 pay proper minimum wages, (2) failure to pay for rest and recovery periods under Labor Code §
4 226.2, (3) failure to reimburse business expenses, (4) failure to pay wages, (5) failure to timely
5 pay final wages, (6) failure to provide accurate itemized wage statements; and (7) unfair and
6 unlawful competition. Plaintiff later filed the operative First Amended Complaint adding PAGA
7 claims (the “Complaint”).

8 13. Defendant retained counsel and immediately began to defend the case, arguing
9 that all materials allegations lack merit. Defendant further asserted that Defendant Heniff
10 Transportation Systems, LLC (“Heniff”) is not a proper defendant in this matter, as Plaintiff was
11 employed solely by Carry Transit, LLC, and the two companies have separate DOT numbers that
12 haul different types of products. Then, after early discussions among counsel, the Parties agreed
13 to attend private mediation.

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

23 15. On October 10, 2023, Plaintiff and Defendant participated in mediation before
24 Judge Hogue, a well-respected retired judge that previously served on Los Angeles Superior
25 Court Complex Panel, presiding over complex wage-and-hour matters. The matter resolved at
26 mediation. The Parties memorialized the terms of the settlement in a long-form Settlement
27 Agreement and, pursuant to the terms of the settlement, the Parties now seek preliminary
28 approval of the Settlement.

1 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL’S INVESTIGATION, AND**
2 **EVALUATION OF THE SETTLEMENT**

3 16. The putative Class in this case consists of approximately 47 similarly situated
4 non-exempt employees employed by Defendant Carry Transit, LLC in California at any time
5 during the Class Period. Plaintiff alleged numerous wage and hour violations on behalf of the
6 Class Members. However, Defendant vigorously contested and denied each of Plaintiff’s
7 material allegations on the merits and as to the propriety of a class action or PAGA
8 representative action, as discussed herein.

9 17. In preparation for mediation, Kristina Carlson, an associate within my firm, and I
10 formulated a damages model and risk analysis based upon detailed data obtained through
11 informal discovery and information exchanges. The summary of the claims below is based on
12 calculations by our expert and us, and the risks that we potentially faced, giving significant credit
13 to the defenses that Defendants raised or would like raise in further proceedings. Following the
14 informal exchange and other information provided by Defendants, we estimated the following
15 data points through the date of mediation: (1) 47 class members, (2) 24 class members that
16 separated from employment during the 3-year lookback for Labor Code § 203, (3) approximately
17 4,063 workweeks, and (4) approximately 2,700 workweeks during the PAGA Period. From these
18 metrics, and when factoring in claim certification probabilities and liability probabilities, we
19 formulated detailed damages models to value the claims in preparation for mediation and to
20 reach a realistic and reasonable resolution.

21 18. Here, there were two main categories of claims alleged by Plaintiff: (1) unpaid
22 wage claims under various theories and (2) derivative claims for waiting time and wage
23 statement penalties due to the other alleged violations.

24 19. As to the unpaid wage claims, Plaintiff alleged that Defendants paid Class
25 Members on a “percentage of the load” or “per-mile” driven basis. Therefore, Plaintiff alleged
26 that Defendants failed to pay all required minimum and overtime wages due to a practice that
27 required Class Members to complete non-driving tasks (*e.g.*, pre-trip and post-trip inspections,
28 fueling, going through truck scales, detention time) without any compensation for these tasks.

1 But Defendants vehemently opposed these unpaid wage claims on the merits and as to the
2 propriety of class certification. Due to the defenses and arguments raised, Plaintiff assigned a
3 20% risk for the unpaid wage claim at the class certification stage and an additional 20% risk on
4 the merits. In sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage
5 claims as \$520,064.

6 20. Plaintiff alleged claims for waiting time penalties and wage statement violations.
7 But these claims were entirely derivative of the claims above, meaning that they only had merit
8 if the claims for unpaid wages were successful. The maximum values for these claims were as
9 follows: (1) \$180,000 for waiting time penalties [24 former employees x \$250 average daily pay
10 x 30 days], and (2) \$267,750 for wage statement violations [2,700 wage statements at the
11 \$50/\$100 formula under § 226(e)].

12 21. But Defendants raised a variety of defenses to these derivative claims that
13 impacted the valuation. Namely, Defendants argued that the wage statements did not violate
14 Labor Code § 226 and, even if there was a "technical" violation, Plaintiff would be unable to
15 prove the required "knowing and intentional" and "injury" elements. Based on these facts and
16 defenses, Plaintiff placed a nominal 20% risk at class certification (mirroring the claims on
17 which the wage statement claim was based) and estimated another 20% risk the merits, leading
18 to a risk-adjusted value of \$171,360 for the wage statement claims.

19 22. Then, as to the waiting time penalty claim, Plaintiff's valuation had to account for
20 the fact that this claim was derivative of the unpaid wage claims and, if those claims failed at
21 certification or on the merits, there would be no waiting time penalties owed, so the same risks
22 for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest
23 claims succeeded at certification and on the merits, Plaintiff would have to prove that the
24 violations (if any existed) were "willful" under the meaning of Labor Code § 203. And, here,
25 Defendant argued there was no "willful" violation as they were inadvertent and unintentional.
26 As a result of this analysis, Plaintiff's counsel applied a 20% risk at class certification and a 20%
27 risk on the merits, leading to a risk-adjusted value of \$115,200.
28

23. Plaintiff also alleged claims for unreimbursed business expenses. Plaintiff alleged that he and the Class Members to obtain and maintain a smart phone with data plan in order to communicate with Defendants, yet Defendants did not provide any reimbursement for this expense. The maximum value for this claim was \$81,260. However, Defendants contend that Plaintiff and Class Members had an electronic logging device at the terminals through which the drivers could communicate. Plaintiff assigned a 20% risk for the claim at the class certification stage and an additional 20% risk on the merits. In sum, Plaintiff's counsel calculated the risk-adjusted value of this claim as \$52,006.

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

• Unpaid Wage Claims	\$ 520,064
• Reimbursement Claims	\$ 52,006
• Wage Statement Claims	\$ 171,360
• Waiting Time Penalty Claims	<u>\$ 115,200</u>
• Total Risk Adjusted Penalties and Damages	\$ 858,630

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

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

26. The settlement will result in a fair payment to each class member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with

1 further litigation described above and weighing them against the benefits of a known
2 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
3 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
4 reasonable resolution of the claims alleged.

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

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

17 29. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
18 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

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

23 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

24 31. Plaintiff seeks an enhancement payment of \$7,500 for his service to the class,
25 which I believe is fair and warranted. Mr. Mittie came forward in an effort to effectuate a policy
26 and practice change that benefitted all other Class Members, and to recover unpaid wages. He
27 assumed significant risk in bringing this litigation—namely, had he lost, he would have been
28 ordered to pay Defendant's costs.

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

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

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

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

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

SETTLEMENT ADMINISTRATOR

36. The parties request that the Court appoint Phoenix Settlement Administrators to serve as the Settlement Administrator. Phoenix is experienced in administering class action settlements, and has provided a proposal to administer this settlement for a total of \$5,000, which is attached hereto as **Exhibit 4**.

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EXHIBITS AND CONCLUSION

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

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

40. A true and correct copy of Plaintiff's notice to the LWDA is attached as **Exhibit**

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

3.

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

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

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

EXHIBIT “1”

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Attorneys for Defendants CARRY TRANSIT, LLC and HENIFF TRANSPORTATION
SYSTEMS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

WILLIAM MITTIE, individually, on a
representative basis, and on behalf of all
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Plaintiff,

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CARRY TRANSIT, LLC, a Delaware
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DOES 1 through 20, inclusive;

Defendants.

Case No.: 22CV008178
*[Assigned to Hon. Judge Evelio Grillo, Dept.
21, for all purposes]*

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

Complaint filed: March 9, 2022

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff William Mittie, individually and on behalf of all others similarly
3 situated, and Defendant Carry Transit, LLC, and is approved by their respective counsels of
4 record, subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 As used herein, for the purposes of this Settlement Agreement only, the following terms
7 shall be defined as set forth below:

8 1. "Action" or "Lawsuit" mean and refer to the case entitled *William Mittie v. Carry*
9 *Transit, LLC*, Superior Court of California, County of Alameda, Case No. 22CV008178.

10 2. "Aggrieved Employees" means all current and former California resident truck
11 drivers who were employed by Defendant Carry Transit, LLC, and who drove in California at
12 any time during the PAGA Period.

13 3. "Class" consists of all current and former California resident truck drivers who
14 were employed by Defendant Carry Transit, LLC, and who drove in California at any time
15 during the Class Period.

16 4. "Class Member(s)" refers to individual members of the Class.

17 5. "Class Counsel" refers to Brian Mankin and Kristina Carlson of Lauby Mankin
18 Lauby LLP.

19 6. "Class Data" mean a complete list that Defendant will diligently and in good faith
20 compile from its records and provide to the Settlement Administrator on spreadsheets and shall
21 include the Class Members' full names; last known addresses; last known telephone numbers (if
22 available); Social Security Numbers; and the total Weeks Worked during the Class Period for
23 each Class Member and PAGA Period for each Aggrieved Employee.

24 7. "Class Period" is deemed to be any time during the period of March 9, 2018,
25 through January 10, 2024.

26 8. "Class Representative" or "Plaintiff" means and refers to William Mittie.

27 9. "Complaint" refers to the operative first amended complaint in the Action,
28 alleging Class Claims and representative PAGA Claims.

1 10. “Court” or “Judge” means the Superior Court of California, County of Alameda.

2 11. “Defendant” refers to Carry Transit, LLC.

3 12. “Defendant’s Counsel” or “Defense Counsel” refers to Littler Mendelson, P.C.

4 13. “Effective Date” means (a) Sixty-one (61) calendar days after the date the Court
5 enters the Final Judgment and order finally approving the Settlement, if no motions for
6 reconsideration and no appeal or other effort to obtain review has been filed, or (b) in the event
7 that a motion for reconsideration, an appeal or other effort to obtain review of the Final
8 Judgment and Order finally approving the Settlement, the date sixty-one (61) calendar days after
9 such reconsideration, appeal or review has been finally concluded and is no longer subject to
10 review, whether by appeal, petition for rehearing, petition for review or otherwise and the
11 Settlement has not been materially modified. A “material modification” shall not include any
12 change to the Class Counsel Award, Class Representative Service Award, or amount awarded for
13 Settlement Administration Costs.

14 14. “Escalator Clause:” Defendant represents that there are approximately 47 Class
15 Members, who collectively worked a total of approximately 4,812 Workweeks during the Class
16 Period. If the Workweek number increases by more than 5,293 Workweeks (which is 10% more
17 than the estimated Workweek count) by January 10, 2024, Defendant will either: a) increase the
18 Adjusted Gross Settlement Amount proportionately for the percentage of workweeks in excess of
19 the 10% threshold (i.e., an 11% increase in workweeks will result in a 1% increase of the
20 Adjusted Gross Settlement Amount); or 2) adjust the end date of the Class Period so that the
21 release covers no more than 5,293 workweeks. If Defendant chooses option 2, the end date of the
22 PAGA Period shall be adjusted to match the end date of the Class Period, but under no
23 circumstance shall the Class Period and/or PAGA Period be adjusted prior to the date of
24 mediation (October 10, 2022). The Adjusted Gross Settlement Amount is the Gross Settlement
25 Amount minus the PAGA Penalties, Service Payment and Attorneys’ Expenses.

26 15. “Final Approval” refers to the order of the Court granting final approval of this
27 Settlement Agreement and entering a judgment approving this Settlement Agreement on
28 substantially the terms provided herein or as the same may be modified by subsequent written

1 agreement of the Parties.

2 16. "Gross Settlement Amount" is \$425,000.00, subject to the Escalator Clause and
3 exclusive of Defendant's obligation to fund their respective shares of payroll taxes, as further
4 discussed in Paragraph 47(a) below.

5 17. "Individual Class Payment" refers to each Participating Class Members share of
6 the Net Settlement Amount, as further discussed in Paragraph 47(c) below.

7 18. "Individual PAGA Payment" refers to each Aggrieved Employees share of the
8 PAGA Penalties, as further discussed in Paragraph 47(h) below

9 19. "Net Settlement Amount" shall have the meaning ascribed to it in Paragraph 47(b)
10 below.

11 20. "Notice" means the notice of class action and PAGA settlement that will be sent
12 to the Class Members and Aggrieved Employees.

13 21. "Objecting Class Member" means a Class Member, other than Plaintiff, who
14 submits a valid and timely objection to the terms of this Settlement Agreement with respect to
15 the Released Class Claims, pursuant to Paragraph 70(c) below.

16 22. "PAGA" means the California Private Attorneys General Act of 2004, California
17 Labor Code §§ 2698 *et seq.*

18 23. "PAGA Penalties" means the total amount of civil penalties that the Parties have
19 agreed will be paid from the Gross Settlement Amount to settle the PAGA Claims, allocated
20 seventy-five percent (75%) to the California Labor and Workforce Development Agency
21 ("LWDA") in accordance with PAGA, and twenty-five percent (25%) for the individual PAGA
22 payments to Aggrieved Employees, as set forth further below in Paragraph 47(h).

23 24. "PAGA Period" is deemed to be any time during the period of March 9, 2021,
24 through January 10, 2024.

25 25. "Participating Class Member" means any and all Class Members who do not opt-
26 out by submitting a timely, valid Request for Exclusion.

27 26. "Parties" mean Plaintiff and Defendant, collectively.

28 27. "Preliminary Approval Date" means the date the Court preliminarily approves this

Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

28. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this settlement and providing for the issuance of the Notice to the Class Members and Aggrieved Employees, an opportunity for Class Members to opt-out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.

29. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Sec. 468.

30. “Released Class Claims” or “Class Claims” by the Participating Class Members (and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns), upon Final Approval of the settlement and Defendant’s funding of the Gross Settlement Amount will include all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including claims for failure to pay minimum or regular wages for all hour worked, failure to pay for nonproductive time, failure to pay for rest and recovery periods, failure to reimburse business expenses, failure to pay timely wages during employment, failure to pay all earned and accrued wages to discharged/separated employees, furnish accurate itemized wage statements, and maintain required payroll records in violation of Labor Code sections 200-204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 1198.5, 1199, 2802, or Industrial Welfare Commission Orders 4-2001 and 9-2001, or Business and Professions Code section 17200, et seq., which are premised on the same allegations, and Cal. Code Regs., tit. 8, section 11090.

31. “Released PAGA Claims” means the PAGA claims that Plaintiff alleged against the Released Parties, on behalf of himself and the State of California, based on the facts stated in the Complaint and in the relevant LWDA notice letter or that could have been asserted based on

those facts, including violations premised on violation of Labor Code sections 200-204, 208, 210, 218.6, 221-223, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, IWC Wage Orders 4, including §§ 3(A), 4, 11, 12, and Cal. Code Regs., tit. 8, section 11090, and all other claims for civil penalties recoverable under the PAGA based on the facts or claims alleged in the LWDA notice letter and the Complaint.

32. “Released Parties” means Defendant, its parents, subsidiaries and affiliates (including Heniff Transportation Systems, LLC) and each of their current and former owners, directors, officers, employees, agents, and insurers.

33. “Release” shall mean (1) the release and discharge of the Released Class Claims by Plaintiff and all Participating Class Members, and (2) the release and discharge of the Released PAGA Claims by Plaintiff, the State of California, and all of the Aggrieved Employees.

34. “Request for Exclusion” means and refers to a valid and timely request for exclusion from the settlement of the Released Class Claims, which may be submitted by any Class Member, other than Plaintiff, pursuant to Paragraph 70(a) below.

35. “Response Deadline” is sixty (60) calendar days from the date the Notice is mailed to the Class Members and Aggrieved Employees.

36. “Service Payment” means, as set forth further in Paragraph 47(e) below, the amount approved by the Court to be paid from the Gross Settlement Amount to the Class Representative, William Mittie, in addition to William Mittie’s Individual Class Payment as a Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

37. “Settlement Administrator” means and refers to Phoenix Settlement Administrators, the third-party class action settlement administrator agreed to by the Parties, that will provide the Notice to the Class and Aggrieved Employees and distribute the settlement amounts as described in this Settlement Agreement.

38. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this settlement, including, but not limited to, printing, distributing, and tracking documents for this settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property

1 due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount,
2 and providing necessary reports and declarations, as requested by the Parties.

3 39. "Settlement Agreement" means this Class Action and PAGA Settlement
4 Agreement and Release of Claims.

5 40. "Work Week(s)" or "Week(s) Worked" means all calendar weeks in which the
6 Class Member or Aggrieved Employee was employed by Defendants in California as a truck
7 driver and worked at least one shift during the week. For purposes of calculating Weeks Worked,
8 there will no fractional calculations (*i.e.*, a situation where an individual worked only one shift
9 during a week does not equal 1/7th of a Work Week, it counts as one Work Week).

10 **B. General Terms**

11 41. Plaintiff filed a class action complaint with the Court on March 9, 2022. Then, on
12 or about June 9, 2022, Plaintiff filed the operative First Amended Complaint against Defendant,
13 alleging class and representative PAGA claims. Plaintiff's Complaint alleged the following class
14 claims: (1) failure to pay minimum wages, (2) failure to pay for rest and recovery periods under
15 Labor Code § 226.2, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5)
16 failure to reimburse for expenses, (6) failure to timely pay final wages, (7) failure to provide
17 accurate itemized wage statements, (8) unfair and unlawful competition pursuant to California
18 Business and Professions Code §§ 17200 *et seq.*, and (9) related PAGA Claims.

19 42. Pursuant to California Labor Code § 2699.3(a), Plaintiff gave timely written
20 notice to Defendant and the LWDA by sending the LWDA notice letter on March 9, 2022
21 ("PAGA Notice") alleging Defendant violated Labor Code §§ 201, 202, 203, 204, 208, 210,
22 218.6, 226, 226.2, 226.3, 256, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and
23 Industrial Welfare Commission Wage Order §§ 3, and Cal. Admin. Code, Title 8, § 11090. In
24 Plaintiff's PAGA Notice, Plaintiff further alleged Plaintiff and Aggrieved Employees were not
25 provided proper minimum wages, compensated for rest and recovery periods, provided
26 compliant meal and rest periods, provided timely payment of wages each pay period, reimbursed
27 for expenses, provided timely payment of final wages, and provided accurate itemized wage
28 statements.

1 41. Defendant denies Plaintiff's claims and allegations and contends that the Action is
2 not suitable for class certification or manageable as a class or representative action.

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

5 43. The Parties have conducted a thorough investigation into the facts of the Action.
6 This includes conducting an extensive exchange of informal discovery, including Defendant's
7 written policies and practices and confirmation regarding the uniform payroll and timekeeping
8 practices for Class Members. Class Counsel is both knowledgeable about and has done
9 extensive research with respect to the applicable law and potential defenses to the claims. Class
10 Counsel has diligently pursued an investigation of the Class Members' claims against Defendant.
11 Based on the foregoing data and on their own independent investigation and evaluation, Class
12 Counsel is of the opinion that the settlement with Defendant for the consideration and on the
13 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
14 interest of the Class Members in light of all known facts and circumstances, including the risk of
15 significant delay and uncertainty associated with litigation, various defenses asserted by
16 Defendant, and numerous potential appellate issues.

17 44. On October 10, 2023, Plaintiff and Defendant participated in mediation before
18 Judge Amy Hogue, a well-respected retired judge who served on the LA Superior Court complex
19 division, and now works as a wage and hour mediator. The Action resolved at mediation and,
20 thereafter, the Parties continued to negotiate the terms embodied in this Settlement Agreement.

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

26 46. Stipulation to Class Certification and Representative Treatment. For settlement
27 purposes only, Defendant will stipulate that the Class Members described herein who do not
28 submit a timely Request for Exclusion from the Class may be conditionally certified as a

1 settlement class and that the Aggrieved Employees are appropriate for representative treatment.
2 Defendant's stipulation to certification and representative treatment for settlement purposes only
3 is not an admission that class action certification and/or representative treatment is proper, not
4 admissible in this or any other action except for the sole purpose of enforcing this Settlement
5 Agreement, and not deemed as a waiver to any additional defenses against class or representative
6 action treatment. Should, for whatever reason, the Court fail to issue either Preliminary
7 Approval or Final Approval, the Parties' stipulation to class certification and representative
8 treatment as part of the settlement shall become null and void *ab initio* and shall have no bearing
9 on and shall not be admissible in connection with the issue of whether or not certification and/or
10 representative treatment would be appropriate in a non-settlement context. Defendant expressly
11 reserves its rights and declares that Defendant would continue to oppose class certification,
12 representative treatment, and the substantive merits of the case should the Court decline to issue
13 Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to
14 pursue class certification, representative treatment, and a trial should the Court decline to issue
15 Final Approval.

16 **C. Terms of Settlement**

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

18 (a) Gross Settlement Amount: The Parties agree to settle this Action for Four
19 Hundred Twenty-Five Thousand Dollars and Zero Cents (\$425,000.00) ("the Gross Settlement
20 Amount"). The Gross Settlement Amount is the maximum amount that will be paid, and
21 includes Individual Class Payments, Individual PAGA Payments, Attorneys' Fees and Costs
22 Award, the Service Payment to the Class Representative, all Settlement Administration Costs,
23 PAGA Penalties, and interest. Defendant shall separately pay the employer's share of applicable
24 payroll tax obligations due on the wage portions of the Individual Class Payments, which shall
25 be reported through the Settlement Administrator.

26 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
27 Gross Settlement Amount less the court-approved Attorneys' Fees and Costs Award, the court-
28 approved Service Payment to the Class Representative, the court-approved Settlement

Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Payment to the Class Representative, and/or Settlement Administration Costs, and/or either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement Amount shall be increased or decreased accordingly.

(c) Individual Class Payments: Individual Class Payments for the Class will be calculated and apportioned from the Net Settlement Amount based on the number of Weeks Worked by a Class Member during the Class Period. Each specific Individual Class Payment will be calculated by: (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Members' Weeks Worked. The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Class Payment for each Participating Class Member according to the number of Weeks Worked, so that the amount actually distributed to Participating Class Members equals one hundred percent (100%) of the Net Settlement Amount.

(d) Allocation of Individual Class Payments: The Individual Class Payments will be allocated based on the allegations in the Action as follows: one-third (1/3) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and the remaining two-thirds (2/3) will be allocated between interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226, 2699) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), in exchange for the services Plaintiff performed on behalf of the Class (including taking steps to support the settlement) and for entering into the general and expansive release discussed hereinafter.

1 Defendant agrees not to oppose this Service Payment request if Plaintiff does not take any action,
2 directly or indirectly, to undercut this settlement. The Service Payment to Plaintiff will be paid
3 out of the Gross Settlement Amount. The Class Representative will be issued IRS Form 1099 in
4 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
5 applicable taxes on this Service Payment. The Parties agree that any amount awarded as the
6 Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel
7 to void this Settlement Agreement or to appeal this aspect of the Court's ruling. Should the
8 Court approve a lesser amount for the Service Payment, the difference shall be added to the Net
9 Settlement Amount to be distributed to Participating Class Members.

10 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
11 request by Class Counsel to the Court for an award of attorneys' fees of not more than one-third
12 (1/3) of the Gross Settlement Amount (currently estimated to be \$141,666.67), plus reasonable
13 litigation costs not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00)
14 ("Attorneys' Fees and Cost Award"), subject to Court approval. The Attorneys' Fees and Cost
15 Award shall be paid from the Gross Settlement Amount, and Defendant shall have no further
16 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
17 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
18 the Net Settlement Amount to be distributed to Participating Class Members. The Parties agree
19 that any amount awarded as attorneys' fees and costs to Class Counsel less than the requested
20 amount shall not be a basis for Class Counsel to rescind or otherwise void this Settlement
21 Agreement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099
22 reflecting the amount of attorneys' fees and costs awarded by the Court. Ten percent (10%) of
23 the attorney fees awarded by the Court shall be kept in the Settlement Administrator's account
24 until the completion of the distribution process and Court approval of a final accounting.

25 (g) Settlement Administration Costs: The fees and other charges of the
26 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed
27 \$5,000.00, unless approved by all Parties and the Court.
28

1 (h) PAGA Penalties: The Parties agree that \$42,500.00 is allocated to PAGA
2 Penalties and is to be paid from the Gross Settlement Amount, subject to the Court's approval.
3 Seventy-five percent (75%) of the PAGA Penalties (\$31,875) shall be paid to the LWDA in
4 satisfaction of civil penalties under the Private Attorney General Act of 2004 ("PAGA") and
5 twenty-five percent (25%) of the PAGA Penalties (\$10,625) will be paid to the Aggrieved
6 Employees based upon the number of Weeks Worked by each Aggrieved Employee during the
7 PAGA Period, which will be treated entirely as civil penalties and reported as required on an IRS
8 Form 1099. Class Counsel shall give proper notice to the LWDA of the settlement.

9 (i) Tax Liability: Class Counsel, Defendant, and Defendant's counsel make
10 no representations as to the tax treatment or legal effect of Settlement Amounts called for
11 hereunder, and Plaintiff, Class Members, and Aggrieved Employees are not relying on any
12 statement or representation by Class Counsel, Defendant, or Defendant's counsel in this regard.
13 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
14 will be solely responsible for the payment of any taxes and penalties assessed on their respective
15 Settlement Amounts described herein. The amount of federal income tax withholding will be
16 based upon a flat withholding rate for supplemental wage payments in accordance with Treas.
17 Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be
18 made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
19 and/or Forms 1099 will be distributed at the times and in the manner required by the Internal
20 Revenue Code of 1986 (the "Code") and consistent with this Settlement Agreement. If the Code,
21 the regulations promulgated thereunder, or other applicable tax law, are changed after the date of
22 this Settlement Agreement, the processes set forth in this Section of this Settlement Agreement
23 may be modified in a manner to bring Defendant into compliance with any such changes.
24 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
25 will be solely responsible for the payment of any taxes and penalties assessed on their respective
26 payments described herein and will hold Defendant harmless from and against any claims
27 resulting from treatment of such payments as non-taxable damages.
28

(j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

48. No Credit Toward Benefit Plans. The Individual Class Payments made to Participating Class Members under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, shall not be utilized to calculate any additional

benefits under any benefit plans to which any Participating Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this settlement will not affect any rights, contributions, or amounts to which any Participating Class Members may be entitled under any benefit plans. The Parties agree that the amounts paid pursuant to this settlement are not for days or hours worked, and shall not be included toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

49. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Gross Settlement Amount revert to Defendant. Participating Class Members will not have to make a claim in order to receive an Individual Class Payment, and Aggrieved Employees will not have to make a claim in order to receive their Individual PAGA Payment. Distributions, in the form of Individual Class Payments and/or Individual PAGA Payments, will be made directly to each Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as a result of a Participating Class Member or Aggrieved Employee not cashing a check by the check cashing deadline, as set forth herein.

50. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and adequate, and will so represent to the Court.

D. Release by Plaintiff and the Participating Class Members

51. Upon entry of the Final Approval Order and Defendant's funding of the entire Gross Settlement Amount, and except as to such rights or claims as may be created by this Settlement Agreement, the Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period. It is the intent of the Parties that the Final Approval Order and judgment entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Class Claims.

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

3 53. Plaintiff and Defendant intend that the settlement described in this Settlement
4 Agreement will release and preclude any further claim, whether by lawsuit, administrative claim
5 or action, arbitration, demand, or other action of any kind, by each and all of the Participating
6 Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the
7 Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph
8 only applies to Participating Class Members and, thus, does not apply to any Class Member who
9 timely and validly submits a Request for Exclusion.

10 54. Class Representative, on behalf of himself and the Participating Class Members,
11 acknowledges and agrees that the claims, including claims for unpaid wages and untimely
12 payment of wages are disputed, and that the payments set forth herein constitute payment of all
13 sums allegedly due to them. Class Representative, on behalf of himself and the Participating
14 Class Members, acknowledges and agrees that California Labor Code § 206.5 is not applicable to
15 the Parties hereto. California Labor Code § 206.5 provides in pertinent part as follows:

16 An employer shall not require the execution of any release of any claim or
17 right on account of wages due, or to become due, or made as an advance
18 on wages to be earned, unless payment of those wages has been made.

19 **E. Release of the Released PAGA Claims**

20 55. Upon entry of the Final Approval Order and Defendant's funding of the entire
21 Gross Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA,
22 and on behalf of the State of California, will forever completely release and discharge the
23 Released Parties from the Released PAGA Claims for the PAGA Period. Moreover, Plaintiff
24 releases any individual portion of the PAGA Claims for the PAGA Period. It is the intent of the
25 Parties that the Final Approval Order and judgment entered by the Court shall have full equitable
26 and collateral estoppel and *res judicata* effect and be final and binding upon the LWDA/State of
27 California regarding the Released PAGA Claims.

28 56. The LWDA/State of California will be deemed to have made the foregoing

1 Release as if by manually signing it.

2 57. Plaintiff and Defendant also intend that the settlement described in this Settlement
3 Agreement will release and preclude any further PAGA claim, whether by lawsuit,
4 administrative claim or action, arbitration, demand, or other PAGA action of any kind, by each
5 and all of the Aggrieved Employees to obtain a recovery based on, arising out of, and/or related
6 to any and all of the Released PAGA Claims. The Aggrieved Employees shall be so notified in
7 the Notice and Class Counsel shall provide appropriate notice to the LWDA of this Settlement
8 Agreement prior to the filing of the Motion for Preliminary Approval. Aggrieved Employees
9 shall receive their portion of the PAGA Settlement and shall be deemed to have released the
10 PAGA Claims even if they opt out of the Class Settlement.

11 **E. Release by Class Representative**

12 58. As a material inducement to Defendant to enter into this Settlement Agreement
13 and in consideration of the Service Payment, and in addition to the Class Representative's
14 release of the Released Class Claims and Released PAGA Claims (including any individual
15 PAGA Claims), Class Representative does hereby, for himself and for his respective spouses,
16 domestic partners, marital community, children, estates, attorneys, heirs, successors,
17 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
18 personal representatives, and assigns forever and completely release and discharge and covenants
19 not to sue the Released Parties with respect to any and all claims, demands, liens, agreements,
20 contracts, covenants, actions, suits, causes of action, wages, obligations, debts, liquidated
21 damages, penalties, interest, costs, expenses, attorneys' fees, damages, judgments, orders and
22 liabilities of whatever kind or nature in law, equity or otherwise, whether now known or
23 unknown, suspected or unsuspected, concealed or hidden, which Plaintiff now owns or holds or
24 has at any time heretofore owned or held as against said Released Parties, or any of them. Such
25 released claims include specifically, but not exclusively and without limiting the generality of the
26 foregoing, any and all claims, demands, agreements, obligations and causes of action arising out
27 of, based upon, or relating to Class Representative's employment with Defendant or the
28 remuneration for or termination of such employment, as alleged in the Complaint, arising out of

1 or in any way connected with any transactions, occurrences, acts or omissions set forth, or facts
2 alleged, in any and all charges, complaints, claims or pleadings filed by Class Representative
3 against any Released Party prior to the date hereof with any city, county, state or federal agency,
4 commission, office or tribunal whatsoever; or arising out of or in any way connected with any
5 transactions, occurrences, acts or omissions occurring prior to the date hereof, including
6 specifically without limiting the generality of the foregoing any claim under Title VII of the
7 Civil Rights Act of 1964, the Age Discrimination in Employment Act (29 U.S.C. Section 621 *et*
8 *seq.*), the Americans with Disabilities Act, the Employee Retirement Income Security Act, the
9 National Labor Relations Act, the Fair Labor Standards Act, the Family and Medical Leave Act,
10 the California Constitution, the California Labor Code, the California Civil Code, the California
11 Government Code, the California Business & Professions Code, the California Family Rights
12 Act, the California Fair Employment and Housing Act, the California Industrial Welfare
13 Commission Wage Orders, or any other federal, state, or local statute or regulation (collectively,
14 the "Class Representative's Claims").

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

25 60. Class Representative expressly waives and relinquishes all rights and benefits
26 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
27 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
28 Code of the State of California states:

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

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

18 61. Class Representative represents and warrants that he has not filed and will not file
19 any other lawsuit, administrative claim or action, arbitration, demand, or other action of any kind
20 against Defendant or the Released Parties. Class Representative represents and warrants that the
21 only pending claims against Defendant or the Released Parties are included in this Action.
22 However, the Parties agree that nothing in this paragraph shall prevent or prohibit Plaintiff from
23 filing any other lawsuit, administrative claim or action, arbitration, demand, or other action of
24 any kind against Defendant or the Released Parties for workers' compensation benefits, claims
25 for unemployment benefits, or other claims that may not be released by law.

26 **F. Interim Stay of Proceedings**

27 62. Pending completion of all of the prerequisites necessary to effectuate this
28 Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the
Action except such as are necessary to effectuate this settlement.

1 **G. Notice Process**

2 63. Appointment of Settlement Administrator. The Parties have agreed to the
3 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
4 including mailing the Notice, using standard devices to obtain forwarding addresses,
5 independently reviewing and verifying documentation associated with any claims or opt-out
6 requests, resolving any disputes regarding the calculation or application of the formula for
7 determining the Individual Class Payments and Individual PAGA Payment, drafting and mailing
8 the settlement checks to Participating Class Members, and Aggrieved Employees, issuing W-2
9 and 1099 Tax Forms, performing unclaimed funds due diligence, reporting and performing
10 remittance obligations, and performing such other tasks as set forth herein or as the Parties
11 mutually agree or that the Court orders.

12 64. Disputes Regarding Settlement Administration. Any and all disputes relating to
13 administration of this settlement by the Settlement Administrator (except for disputes regarding
14 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
15 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
16 the Court that all payments and obligations contemplated by this Settlement Agreement have
17 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
18 confer in good faith to resolve the dispute without the necessity of Court intervention. The
19 Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class
20 Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other tax forms as may
21 be required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement
22 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding
23 all payroll taxes and penalties to the appropriate government authorities.

24 65. Class Data. Within fourteen (14) calendar days after entry of the Preliminary
25 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
26 Settlement Administrator will run a check of the Class Members' addresses against those on file
27 with the U.S. Postal Service's National Change of Address Database. The Class Data provided
28 to the Settlement Administrator will remain confidential, shall be used solely to administer the

1 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
2 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
3 order of the Court. Although Class Counsel will not be provided with the list of Class Data,
4 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
5 the Action and settlement.

6 66. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
7 Administrator to the Class Members, by first class mail, in English only, within ten (10) calendar
8 days following the Settlement Administrator's receipt of the Class Data. The Settlement
9 Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses
10 of Class Members if any envelopes are returned.

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

21 68. Disputes Regarding Information on Notices of Settlement. Class Members are
22 deemed to participate in the Settlement, unless they timely opt-out, and Aggrieved Employees
23 may not opt-out of the Released PAGA Claims. The Notice will inform Class Members of
24 his/her estimated Individual Class Payment and the number of Weeks Worked during the Class
25 Period and PAGA Period. Class Members may dispute their Weeks Worked if they feel they
26 should be credited with more than represented on the Notice by timely submitting evidence to
27 the Settlement Administrator. Defendant's records will be presumed determinative absent
28 reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the

evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Weeks Worked and estimated Individual Class Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members will have until the Response Deadline to dispute Weeks Worked, object or opt-out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Weeks Worked for any Class Member and/or Aggrieved Employee, then the Settlement Administrator will recalculate the Individual Class Payments and Individual PAGA Payments.

69. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) calendar days prior to the Final Approval Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notices of Settlement.

70. Class Members' Rights. Each Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Released Class Claims, and the ability to opt-out or request exclusion from the Settlement with respect to the Released Class Claims. The Notice will inform the Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement with respect to the Released Class Claims in accordance with the following guidelines:

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

I WISH TO BE EXCLUDED FROM THE CLASS IN THE
CARRY TRANSIT LAWSUIT. I UNDERSTAND THAT IF I
ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT
FROM THIS LAWSUIT.

1 To be valid, any Request for Exclusion must include the full name, address, telephone
2 number, last four digits of the social security number or date of birth, and signature of the Class
3 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
4 Settlement Administrator at the specified address set forth in the Notice. Any such Request must
5 be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be
6 timely only if postmarked by the Response Deadline, unless the Parties otherwise agree in
7 writing. Any Class Member who timely requests exclusion in compliance with these
8 requirements: (i) will not have any rights under this Settlement Agreement with respect to the
9 Released Class Claims, including the right to object, appeal, or comment on the Settlement; (ii)
10 will not be entitled to receive any payments under this Settlement Agreement for the Released
11 Class Claims; and (iii) will not be bound by this Settlement Agreement, or the judgment, with
12 respect to the Released Class Claims. Any Aggrieved Employee who requests timely exclusion
13 will still be subject to the Released PAGA Claims to the fullest extent permitted by law and shall
14 be sent his or her share of PAGA Penalties.

15 (b) Binding Effect on Participating Class Members. Except for those Class
16 Members who exclude themselves in compliance with the procedures set forth above, all Class
17 Members will: (i) be deemed to be Participating Class Members for all purposes under this
18 Settlement Agreement; (ii) will be bound by the terms and conditions of this Settlement
19 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
20 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
21 reasonableness, and adequacy of the Settlement.

22 (c) Objections to Settlement of the Released Class Claims. Any Class
23 Member, other than Plaintiff, may object to the terms of this Settlement Agreement, except as to
24 the Released PAGA Claims. To object, a Class Member shall inform the Settlement
25 Administrator, in writing, of his or her objection which must be postmarked by the Response
26 Deadline at the address set forth in the Notice. Such objection shall include the objecting Class
27 Member's full name, address, telephone number, last four digits of the social security number or
28 date of birth, signature, and dates of employment with Defendant, in addition to the case name

1 and number, the basis for the objection, including any legal support and each specific reason in
2 support of the objection, as well as any documentation or evidence in support thereof, and, if the
3 Objecting Class Member is represented by counsel, the name and address of his or her counsel.
4 The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense
5 Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall attach
6 the same to its declaration of due diligence and file with the Court prior to the Final Approval
7 Hearing. Any Participating Class Member who files an objection remains eligible to receive
8 monetary compensation from the settlement. If a Class Member files an objection *and* submits
9 a timely Request for Exclusion, the latter shall be honored and the Class Member's objection
10 shall be deemed invalid. Plaintiff and Defendant shall not be responsible for any fees, costs, or
11 expenses incurred by any Class Member and/or his or her counsel related to any objections to the
12 settlement. Submitting an objection does not preserve the right to appeal a final judgment.
13 Rather, the right to appeal is preserved by becoming a party of record by timely and properly
14 intervening or filing a motion to vacate the judgment under California Code of Civil Procedure §
15 663. Class Members and Aggrieved Employees may not object to or opt-out of the Settlement
16 with respect to the Released PAGA Claims.

17 (d) Failure to Object. Any Class Member who desires to object to the
18 Released Class Claims in the Settlement but fails to timely submit a written objection or in
19 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
20 from making any objection to this Settlement. Any Class Member who does not timely and
21 properly become a party of record by intervening or filing a motion to vacate the judgment
22 waives any and all rights to appeal from the Judgment, including all rights to any post-judgment
23 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial,
24 a motion under California Code of Civil Procedure § 473, and extraordinary writs.

25 (e) Responses to Objections. Counsel for the Parties may file a response to
26 any objections submitted by objecting Class Members at least five (5) court days before the date
27 of the Final Approval Hearing.

28 (f) Class Members will have until the Response Deadline to object or submit

1 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
2 Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or
3 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
4 Counsel or Defense Counsel.

5 (g) Defective Submissions. If a Class Member's Request for Exclusion or
6 objection is defective as to the requirements listed herein, that Class Member will be given an
7 opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a
8 cure letter within three (3) business days of receiving the defective submission to advise the
9 Class Member that his or her submission is defective and that the defect must be cured to render
10 the Request for Exclusion or objection valid. The Class Member will have the later of (i) the
11 Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter to postmark
12 or fax a revised Request for Exclusion or objection. If the revised Request for Exclusion or
13 objection is not postmarked or received by fax within that period, it will be deemed untimely and
14 disregarded.

15 71. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
16 the QSF of the Gross Settlement Amount, plus the employer's share of payroll taxes, no later
17 than thirty (30) calendar days after the Effective Date. Once Defendant has complied with their
18 obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms and
19 conditions of this Settlement Agreement, shall be entitled to all the protections afforded it under
20 this Settlement Agreement, and shall have no further obligations under this Settlement
21 Agreement, regardless of what occurs with respect to the further administration of the
22 Settlement. The Settlement Administrator (and not Defendant) shall issue the applicable W-2s
23 and IRS Form 1099 reflecting all payments to the Class Members.

24 72. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
25 payment into the QSF, the Settlement Administrator will mail the Individual Class Payments to
26 the Participating Class Members, the payment to Class Counsel for the Attorneys' Fees and
27 Costs Award (less 10% which shall be held back until after the final distribution hearing), any
28 Service Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, the

1 Individual PAGA Payment to Aggrieved Employees, and will pay itself the Settlement
2 Administration Costs.

3 73. Deadline for Cashing Settlement Checks. Participating Class Members and
4 Aggrieved Employees shall have one hundred eighty (180) calendar days after mailing by the
5 Settlement Administrator to cash each settlement check. If any Participating Class Member's or
6 Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-
7 payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the
8 following cy pres in accordance with CCP section 384: Bay Area Legal Aid (baylegal.org).
9 Neither party nor their counsel have an interest or affiliation with this cy pres entity. The release
10 will be binding upon all Participating Class Members and Aggrieved Employees, including those
11 who do not cash their checks within the one hundred eighty (180) calendar days period. In the
12 event that any settlement check is returned to the Settlement Administrator within one hundred
13 eighty (180) calendar days of mailing, the Settlement Administrator will, within five (5) business
14 days of receipt of the returned settlement check, perform a skip trace to locate the individual, and
15 notify Defense Counsel and Class Counsel of the results. If a new address is located by these
16 means, the Administrator will have ten (10) business days to re-issue the check. Neither
17 Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will
18 have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or
19 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
20 Participating Class Member or Aggrieved Employee notifies the Settlement Administrator that
21 he or she believes that a settlement check has been lost or stolen, the Settlement Administrator
22 shall immediately stop payment on such check. If the check in question has not been negotiated
23 prior to the stop payment order, the Settlement Administrator will issue a replacement check.

24 74. No person shall have any claim against Defendant or the Released Parties,
25 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
26 mailings, distributions, payments or reports made in accordance with or pursuant to this
27 Settlement Agreement. This provision does not, however, prevent a Party from seeking
28 enforcement of this Settlement Agreement.

1 75. Without prejudice to any other remedies, the Settlement Administrator shall agree
2 to be responsible for any breach of its obligations (whether committed by the Settlement
3 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
4 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
5 and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

6 **H. Duties of the Parties Prior to the Court's Approval**

7 76. Promptly after execution of this Settlement Agreement, Plaintiff will move the
8 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
9 accomplishing the following:

10 (a) Scheduling the Final Approval Hearing on the issue of whether this
11 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
12 and Aggrieved Employees and a hearing on fees, costs and the Service Payment;

13 (b) Approving as to form and content of the proposed Notice;

14 (c) Directing the mailing of the Notice by first class mail to the Class
15 Members and Aggrieved Employees;

16 (d) Preliminarily approving this Settlement; and

17 (e) Preliminarily certifying the class solely for purposes of this Settlement.

18 77. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
19 hearing, to approve this Settlement Agreement because the amount of the PAGA Penalties is not
20 adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds,
21 within this Settlement Agreement, in order to try to achieve Final Approval of this Settlement
22 Agreement upon any subsequent Court hearings.

23 **I. Duties of the Parties Following Court's Final Approval**

24 78. In connection with the Final Approval Hearing provided for in this Settlement
25 Agreement, Class Counsel shall submit a proposed Final Approval Order:

26 a. Approving the Settlement, adjudging the terms thereof to be fair,
27 reasonable and adequate, and directing consummation of its terms and provisions;

28 b. Approving Class Counsel's application for an award of attorneys' fees and

reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

c. Entering judgment approving settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the Released Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any Released PAGA Claims against any of the Released Parties.

79. Final Judgment. The Settlement Administrator shall give the Participating Class Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter that will be included with their checks.

J. Voiding this Settlement Agreement

80. All Parties, signatories, and their counsel shall not encourage opt-outs or objections to this Settlement Agreement. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means.

81. Defendant shall have the right to void the Settlement if Class Members who worked a combined total of 481 or more Workweeks during the Class Period submit a timely and valid Request for Exclusion.

82. If the settlement is voided or fails to receive Final Approval, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

83. If the settlement is voided or fails for any reason, any Settlement Administrator Costs incurred through the date of failure shall be borne equally by Defendant and Plaintiff, unless Defendant exercises its option to void the Settlement based on the number of Requests for Exclusion in which case Defendant shall solely pay all Settlement Administration Costs incurred through the date the option is exercised.

K. Other Terms

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

1 Settlement Agreement.

2 85. Full and Complete Defense. This Settlement Agreement may be pleaded by any
3 Released Party as a full and complete defense to, and may be used as the basis for an injunction
4 against, any action, suit, or other proceeding that has been or may be instituted, prosecuted or
5 attempted, asserting any Released Class Claim or PAGA Released Claim.

6 86. Parties' Authority. The signatories hereto represent that they are fully authorized
7 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
8 hereof. The signatories hereto further represent that the Parties to this Settlement Agreement are
9 represented by competent counsel, and they have had an opportunity to consult with counsel
10 prior to authorizing its execution.

11 87. No Publicity. Plaintiff and Plaintiff's counsel shall not publicize the settlement
12 on their websites, in advertising/marketing materials or on social media. The Parties and their
13 counsel agree that they will not issue any press releases or initiate any contact with the media
14 about the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry
15 about the settlement from the media, counsel may respond only after the motion for preliminary
16 approval of the settlement has been filed and only by confirming the accurate terms of the
17 settlement. Nothing in this provision shall prevent Defendant from making any required
18 disclosure.

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

1 Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval
2 Motion for review at least five (5) court days prior to the filing deadline.

3 89. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
4 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
5 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
6 cause of action or rights released and discharged by this Settlement Agreement.

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

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

1 92. Notices. Unless otherwise specifically provided herein, all notices, demands, or
2 other communications pursuant to this Settlement Agreement (“Notices”) shall be in writing and
3 shall be addressed as follows:

4 To the Class Members and Aggrieved Employees:

5 Brian Mankin
6 ***brian@LMLfirm.com***
7 Lauby Mankin Lauby LLP
8 5198 Arlington Avenue, PMB 513
9 Riverside, CA 92504
10 Tel: (951) 320-1444 | Fax: (951) 320-1445

11 To Defendant:

12 Marlene S. Muraco
13 ***mmuraco@littler.com***
14 LITTLER MENDELSON, P.C.
15 50 W. San Fernando, 7th Floor
16 San Jose, CA 95113-2431
17 Tel: (408) 998-4150 | Fax: (408) 288-5686

18 Any period of notice and any right or duty to do any act or make any response within any
19 period or on a date certain after service of the Notice, which time period or date is prescribed by
20 statute, Rule of Court or this Agreement, shall be extended as follows: two court days for Notices
21 delivered via email or Express Mail and five calendar days for Notices delivered via U.S. mail.

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

 94. Captions and Interpretations. Paragraph titles or captions contained herein are
inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
describe the scope of this Settlement Agreement or any provision hereof. Each term of this

1 Settlement Agreement is contractual and not merely a recital.

2 95. Modification. This Settlement Agreement may not be changed, altered, or
3 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
4 Settlement Agreement may not be discharged except by performance in accordance with its
5 terms or by a writing signed by all of the Parties hereto.

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

14 97. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
15 dismissal pursuant to the terms of this Settlement Agreement, that, pursuant to California Code
16 of Civil Procedure § 664.6, the Court shall retain exclusive and continuing equity jurisdiction of
17 this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and
18 obligations of this Settlement Agreement.

19 98. Choice of Law. This Settlement Agreement shall be governed by and construed,
20 enforced and administered in accordance with the laws of the State of California.

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

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

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2 101. Invalidity of Any Provision. Before declaring any provision of this Settlement
3 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
4 extent possible consistent with applicable precedents so as to define all provisions of this
5 Settlement Agreement valid and enforceable.

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

11 Dated: March 19, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

12 
13 [William Mittie \(Mar 19, 2024 13:51 PDT\)](#)

14 William Mittie

15 Dated: March 19, 2024

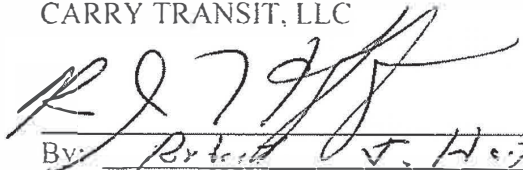
CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

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17 Brian J. Mankin
18 Attorneys for Plaintiff
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1 Dated: March 19, 2024

2 **DEFENDANT:**
3 CARRY TRANSIT, LLC

4 By: 
5 Title: CEO

6 Dated: March 15, 2024

7 **DEFENDANT'S COUNSEL:**
8 LITTLER MENDELSON, P.C.

9 

10 Marlene S. Muraco
11 Attorneys for Defendant

12 **END OF DOCUMENT**
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EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Mittie v. Carry Transit, LLC, et al.

(Alameda County Superior Court, Case No. 22CV008178)

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

You may be eligible to receive money from a class action lawsuit (“Action”) against Carry Transit, LLC (“Defendant”) for alleged unpaid wage claims.

The Action was filed by a former employee of Defendant’s, and seeks payment of unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of the “Class Members” defined as all current and former California resident truck drivers who were employed by Defendant Carry Transit, LLC, and who drove in California at any time during the Class Period (which is March 9, 2018, through January 10, 2024). The Action also seeks penalties under the California Private Attorney General Act (“PAGA”) for all “Aggrieved Employees” defined as all current and former California resident truck drivers who were employed by Defendant Carry Transit, LLC, and who drove in California at any time during the PAGA Period (which is March 9, 2021, through January 10, 2024).

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

[CLASS MEMBER NAME] **[ID/CONTROL NUMBER]**

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

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

If you believe that you worked more weeks during either period than Defendant’s records show in the chart above, you can submit a challenge by **DATE**, 2024 (“**Response Deadline**”). See **Section 4** of this Notice.

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

If you drove for Carry Transit in California during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do <u>not</u> wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for details on how to object). You may <i>either</i> object or exclude yourself from the Settlement. If you attempt to do both, your exclusion will be honored and your objection will be disregarded.
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: [REDACTED], 2024 TIME: [REDACTED]	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative, William Mittie, was a former employee of Carry Transit. The Action accuses Defendant of violating California labor laws due to the alleged: failure to pay minimum wages, failure to pay for rest and recovery periods under Labor Code § 226.2, failure to provide meal periods, failure to provide rest breaks, failure to reimburse for expenses, failure to timely pay final wages, failure to provide accurate itemized wage statements, and unfair and unlawful competition. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

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

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

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

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

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

1. Defendant Will Pay \$425,000 as the Gross Settlement Amount. Defendant has agreed to deposit \$425,000 (the “Gross Settlement Amount”) into an account controlled by a neutral third party, the Settlement Administrator (or “Administrator”). The Gross Settlement Amount could increase if all Class Members collectively worked more than 5,293 Workweeks during the Class Period. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorneys’ fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Settlement approximately 30 days after the Court’s judgment is final, meaning after the deadline to file an appeal or an appeal is resolved.

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

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys' fees (currently estimated to be \$141,666.66) and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$7,500 to the Class Representative as a Service Payment for filing the Action, working with Class Counsel, representing the Class and signing a release of all known and unknown claims he may have against Defendant. The Class Representative's Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$XX to the Administrator for services administering the Settlement (unless the Court approves a higher or lower amount).
- D. Up to \$42,500 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

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

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages (“Wage Portion”) and 66.67% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes they owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be issued to an organization that works to benefit employees. The Parties have selected Bay Area Legal Aid – Working Together for Justine (baylegal.org) as the organization to receive uncashed check funds.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you opt-out of the Settlement no later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

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

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

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

After the Court’s judgment is final, and Defendant has paid the Settlement Amount , the Participating Class Members (on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns), will release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the operative Complaint, including claims for failure to pay minimum or regular wages for all hour worked, failure to pay for nonproductive time, failure to pay for rest and recovery periods, failure to reimburse business expenses, failure to pay timely wages during employment, failure to pay all earned and accrued wages to discharged/separated employees, furnish accurate itemized wage statements, and maintain required payroll records in violation of Labor Code sections 200-204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, or Industrial Welfare Commission Orders 4-2001 and 9-2001, or Business and Professions Code section 17200, et seq., which are premised on the same allegations, and Cal. Code Regs., tit. 8, section 11090 (the “Released Class Claims”). The operative release period for the Released Class Claims is the Class Period.

“Released Parties” includes Defendant, its parents, subsidiaries and affiliates (including Heniff Transportation Systems, LLC) and each of their current and former owners, directors, officers, employees, agents, and insurers.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount, Plaintiff, the State of California, the LWDA and Aggrieved Employees shall release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including violations premised on violation of Labor Code sections 200-204, 208, 210, 218.6, 221-223, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, IWC Wage Orders 4, including §§ 3(A), 4, 3(A), 11, 12, and Cal. Code Regs., tit. 8, section 11090 (the "Released PAGA Claims"). The operative release period for the Released PAGA Claims is the PAGA Period.

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

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

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$10,625 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

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

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

5. HOW WILL I GET PAID?

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

2. Aggrieved Employees Only. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

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

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

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a "Request for Exclusion" letter/card postmarked no later than , 2024 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE CARRY TRANSIT LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT."

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an

Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

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

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as Mittie v. Carry Transit, LLC, and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2024 (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (Mittie v. Carry Transit, LLC, Case No. 22CV008178), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2024.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

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

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in Department 21 of the Alameda County Superior Court, located at 24405 Amador Street, Hayward, CA 94544, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff’s request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

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

Settlement Administrator
Name Mailing Address Telephone Number

If you wish to communicate directly with Class Counsel, you may contact them at the contact information noted here:

Class Counsel
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Kristina Carlson, Esq. <i>kristina@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

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

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on XX, 2024 and which is available to be inspected at any time during regular business hours the Office of the Clerk, Alameda County Superior Court, located at 24405 Amador Street, Hayward, CA 94544.

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

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT “3”



March 9, 2022

Sent Via Online Filing to the LWDA

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

Sent Via U.S. Mail and Certified Mail

Carry Transit, LLC
2222 Camden Court
Oak Brook, IL 60523

Heniff Transportation Systems, LLC
2222 Camden Court
Oak Brook, IL 60523

Re: PAGA Civil Penalty Claim
William Mittie v. Carry Transit, LLC, Heniff Transportation Systems, LLC, et al.

To the Labor and Workforce Development Agency, Carry Transit, LLC, Heniff Transportation Systems, LLC, and all affiliated entities:

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

FACTUAL BACKGROUND

Claimant was employed by the Company from 2015 through March 2022 as a truck driver. Claimant alleges that he and all other truck drivers who resided in California and that were employed by the Company (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

Notably, at all relevant times, Claimant and the Aggrieved Employees were only paid on a piece-rate (per-mile or flat-rate) basis but did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Also, the piece-rate compensation paid to Claimant and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

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

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Additionally, the Company failed to pay Claimant and the Aggrieved Employees their final wages within the timeframe required by Labor Code §§ 201 – 203. Finally, during employment with the Company, Claimant and the Aggrieved Employees received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

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

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

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

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

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

PAGA ASSESSMENT FOR FAILURE TO PAY WAGES

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

During their employment, Claimant and the Aggrieved Employees were paid on a piece-rate but did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as mandatory paid rest breaks, pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Additionally, the piece-rate compensation paid to Claimant and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked. Therefore, this resulted in earned, but unpaid, minimum and regular wages due and owing to Claimant and the Aggrieved Employees.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages.

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

(Labor Code § 226.2)

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

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

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

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

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

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

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan to communicate



with the Company via phone and text message. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

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

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

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

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

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

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

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

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all



applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

Here, the Company violates Labor Code § 226(a) every pay period with respect to Claimant and the Aggrieved Employees because the wage statements failed to provide any information regarding hours worked, and therefore the wage statements did not state “total hours worked by the employee” in direct violation of Labor Code § 226(a)(2). Additionally, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state the number of piece-rate units earned by the Aggrieved Employees and any applicable piece-rate; failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; failure to state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and failure to state the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period. Accordingly, Labor Code §§ 226.3 and 2699 impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

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

ATTORNEYS’ FEES, INTEREST, AND PENALTIES

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

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.



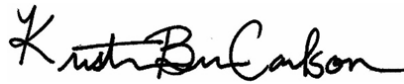
Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

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

Very Truly Yours,

A handwritten signature in black ink that reads "Kristina Bui Carlson". The signature is fluid and cursive, with the first name "Kristina" and last name "Carlson" being clearly legible, and "Bui" in the middle.

By: Kristina Bui Carlson, Esq.

E-mail: kristina@lmlfirm.com



EXHIBIT “4”



CASE ASSUMPTIONS

Class Members	60
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	59
Subtotal Admin Only	\$5,583.74

Flat Fee Total \$5,000.00

For 60 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

December 14, 2023

Case: Mittie v. Carry Transit , Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin

Firm: Lauby, Mankin & Lauby

Contact Number: (951) 320-1444

Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **60** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

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

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	8		\$16.80
NCOA (USPS)	\$11.00	1		\$11.00
Total				\$527.80

* Up to 120 days after disbursement

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

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	60		\$6.00
Notice Packet & Opt-Out Form	\$1.35	60		\$81.00
Estimated Postage (up to 2 oz.)*	\$0.64	60		\$38.40
Static Website	\$200.00	1		\$200.00
Total				\$525.40

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	15		\$15.00
Remail Notice Packets	\$1.00	12		\$12.00
Estimated Postage	\$0.64	12		\$7.68
Programming Undeliverables	\$50.00	2		\$100.00
Total				\$244.68

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	3		\$165.00
Deficiency & Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	1		\$85.00
Total				\$640.00

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

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	3		\$405.00
Mail Class Checks *	\$0.90	59		\$53.10
Estimated Postage	\$0.64	59		\$37.76
Total				\$1,090.86

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	15		\$30.00
Case Associate	\$55.00	2		\$110.00
Reconcile Uncashed Checks	\$85.00	3		\$255.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	2		\$230.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Check to Cy-Pres	\$150.00	1		Included
Total				\$2,555.00

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

Estimate Total: \$5,583.74



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

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

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

Tax Reporting Requirements

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

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

EXHIBIT “5”