

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

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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. Noël Wise, Dept. 21, for all
purposes]*

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

Hearing
Date: September 10, 2024
Time: 1:30 p.m.
Dept: 21

Complaint filed: March 9, 2022

I, Brian J. Mankin, state and declare:

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

///

1 **COUNSEL’S EXPERIENCE**

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

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

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

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
25 the PAGA case was reversed and remanded.

26 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
27 the May 2023 issue of Consumer Attorneys of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **ADEQUACY OF SETTLEMENT**

4 7. The Class, as conditionally certified by this Court, consists of all current and
5 former California resident truck drivers who were employed by Defendant Carry Transit, LLC,
6 and who drove in California at any time during the Class Period of March 9, 2018, through
7 January 10, 2024.

8 8. As set forth in the Declaration of Mayra Gonzalez on behalf of the Settlement
9 Administrator, Phoenix Settlement Administrators, the Net Settlement Amount is \$218,530.25,
10 after the deductions set forth in the chart here:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 425,000.00
Attorneys’ Fees (1/3)	\$ 141,666.66
Litigation Costs	\$ 9,803.09
Administrator Costs	\$ 5,000.00
PAGA Penalties	\$ 42,500.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 218,530.25

16
17 9. The process of mailing the Notice Packets was very successful, as 100% of the
18 Notice Packets were successfully delivered by the Settlement Administrator.

19 10. The response by the Class Members to this settlement was overwhelmingly
20 positive, as 100% of the Class elected to participate in the Settlement.

21 11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in
22 the Motion for Final Approval, this Settlement is very favorable to the Class and the release is
23 narrowly limited to the claims alleged.

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

1 13. I believe that the settlement is fair, reasonable, and adequate, and in the best
2 interests of the Class, given the litigation risks and delay inherent in further litigation and
3 possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations
4 submitted in support thereof, Defendant vigorously challenged Plaintiff's claims, and Plaintiff
5 faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter.
6 Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and
7 that it is desirable that the action be fully and finally settled in the manner and upon the terms
8 and conditions set forth in the Settlement Agreement in order to limit further expense,
9 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit
10 the operation of Defendant's business without further expensive litigation and the distraction and
11 diversion of its personnel with respect to matters at issue. All parties considered the uncertainty
12 of risks inherent in any litigation, especially in complex cases such as this case. The parties
13 determined that it is desirable and beneficial to both the Class and Defendant that this case be
14 settled. Risks on both sides were considered in reaching the Settlement Agreement. The
15 recoveries contemplated by the Settlement represent a good result for the Class, fairly
16 proportioned to the likely risk-adjusted recovery in litigation.

17 **ADEQUACY OF COUNSEL**

18 **AND REASONABLENESS OF REQUESTED FEE AND COST AWARDS**

19 14. As set forth above, I have handled well over 250 class and representative actions.
20 I have been appointed as class counsel and have successfully resolved approximately half of
21 those cases (while many are ongoing and will successfully resolve in the future) while recovering
22 hundreds of millions of dollars for my clients and Class Members. This is substantially better
23 than average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class
24 Actions, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which
25 found that only one-third of class actions are successful, compared to two-thirds that are defeated
26 and result in no payment to the class members.¹

27
28

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

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

5 16. It has been my experience that the benchmark for attorney fee awards in
6 California state cases is one-third of a common settlement fund, which the CA Supreme Court
7 upheld in the Robert Half case. Here, in accordance with the Settlement Agreement, Class
8 Counsel is seeking a fee of \$141,666.66, which is one-third of the Settlement Amount.

9 17. There are several additional factors why I believe that the Court should award
10 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
11 resulted in a common fund settlement amount, whereby the ***Class Members will receive***
12 ***\$4,552.71 on average*** and up to a ***maximum of \$13,007.75*** for those Class Members who
13 worked the longest during the Class Period. This is a very good result in light of the disputed
14 nature of the claims alleged. This result was achieved by the work and success of my office,
15 who negotiated the settlement after extensive preparation, investigation, mediation, and
16 substantial work thereafter.

17 18. Second, Plaintiff faced significant risks going forward with the litigation. As
18 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
19 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
20 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
21 going forward with this litigation, and it would have taken several more years to realize any
22 recovery in this action along with the possibility of post-trial appeals.

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

26 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
27 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
28 substantial amount of time, money, and resources, and have done so since the inception of this

1 case without any payment or compensation. If Plaintiff had lost this case, we would have
2 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
3 my office, which is a small firm. Indeed, I feel that it is important that Class Counsel be
4 compensated for the hardships and risks we faced litigating this contingency case, so that we are
5 incentivized to take on similar cases in the future on behalf of workers. Indeed, not all
6 class/PAGA cases are successful. Many cases end with no fees or a greatly reduced fee that is
7 far less than lodestar, often due to no fault of counsel (i.e., bankruptcy, change in the law,
8 consolidation- coordination-preemption, being top filed, etc.). As noted in the Mayer Brown
9 LLP's study discussed above, only one-third of class actions are successful, compared to two-
10 thirds that are defeated and result in no payment to the class members.

11 21. Fifth, the request for attorney's fees in the amount of one-third of the common
12 fund falls well within the norms accepted by state courts in California in comparable wage and
13 hour actions actually handled by my office. Moreover, the award of a one-third fee recovery
14 under the common fund doctrine was approved by the California Supreme Court in *Laffitte*,
15 *supra*, 1 Cal.5th 480, 503.

16 22. Finally, a one-third fee recovery is *less than our projected lodestar* through the
17 conclusion of this case, resulting in a *negative multiplier*.

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

20 24. At my office, this case was primarily handled by associate attorney, Kristina
21 Carlson, while I performed the role of the supervising attorney. Ms. Carlson works exclusively
22 with me on employment law matters and has been in practice for 10 years. She bills at the
23 hourly rate of \$600/hour. I have been in practice for 23 years, with most of those years handling
24 complex litigation and for over the last 15 years, my practice has almost entirely consisted of
25 handling class action wage and hour matters. My billing rate is \$775/hour. I believe these rates
26 are consistent with Plaintiff and Defense attorneys who handle complex class action litigation, if
27 not somewhat lower.
28

1 25. The hourly rates above are comparable to those of other attorneys with equal or
2 similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com
3 indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney, \$878/hour for a 11–
4 19-year attorney, and \$1,057/hour for a 20+ year attorney). Moreover, the Wolters Kluwer 2023
5 Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard.
6 The Real Rate Report is based on an enormous and statistically significant compilation of data,
7 comprising millions of billing entries from a hundred thousand individual timekeepers who
8 worked at thousands of law firms. The Real Rate Report then compiles and analyzes this data to
9 provide the hourly rates for partners and associates in major metropolitan areas. For the southern
10 California area: (a) the rate for partners in Los Angeles is between \$840 and \$1,159 per hour for
11 the middle and upper quartiles, and (b) the rates for associates with seven or more years of
12 experience, the median rate is \$674 per hour, and the upper quartile rate is \$888 per hour. And,
13 perhaps most importantly, the information provided in the Real Rate Report is not based on self-
14 reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate
15 Report is based on the actual hours and fees billed by law firms, which makes it “a much better
16 reflection of true market rates than self-reported rates in all practice areas.” *Brown v. CVS*
17 *Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*,
18 22 Cal.4th at 1085 (holding that rates should be premised upon precisely this form of
19 independent, “objective” rate data that reflects “fair market” rates actually billed to clients “in
20 the community for similar work”).

21 26. The table below includes a summary of the hours worked, plus additional hours
22 that I will bill in finalizing and filing the motion, preparing for and attending the approval
23 hearing, and working with the administrator and defense counsel to issue checks, respond to
24 class members and finalize this matter. Our aggregated lodestar is approximately \$164,785,
25 resulting in a ***negative*** multiplier, as follows:

26 ///

27 ///

28 ///

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner)	Trial Counsel	23	\$775	79²	\$61,225
Kristina Carlson (Associate)	Handling Attorney	10	\$600	172.6	\$103,560
Grand Total for All Attorneys					\$164,785

27. Ms. Carlson primarily handled the day-to-day matters through mediation, wherein I worked in a supervisory role. Thus, during the initial phases, I conferred with Ms. Carlson frequently to evaluate the claims and develop a direction for the case. Ms. Carlson prepared the majority of the documents and reviewed and further drafted the documents when necessary. Ms. Carlson and I jointly prepared for and attended mediation. Then after a settlement was reached, we typically transition the bulk of the workload to me so that Ms. Carlson can focus on cases in litigation and discovery (although Ms. Carlson did assist with the preparation of the long form and preliminary approval motion). During this time, I reviewed all settlement documents, prepared supplemental papers in support of preliminary approval, worked with the administrator and monitored the notice process, prepared the final approval papers. I will also handle the case through final approval and until the Court approves the final disbursement. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendant does not oppose this fee request.

28. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, fax transmission expenses, transportation, mediation fees, and other incidental expenses directly related to this action. My firm's expenses through the final approval hearing are estimated to be \$9,803.09, which includes filing this

² Includes an estimated 35 hours that will be expended in finalizing the motion, attending the hearing, working with the parties and administrator regarding the notice and payment process, and filing any post judgment paperwork.

1 motion, process/server costs (see the itemized statement of these costs attached hereto as **Exhibit**
2 **B**). Since these actual costs are lower than the \$20,000 allowed under the settlement, the savings
3 will be placed in the Net Settlement Amount for distribution to the Class Members. Defendant
4 does not oppose this request for costs.

5 **REASONABLENESS OF REQUESTED SERVICE AWARD**

6 29. I also believe that the service award of \$7,500 to the Class Representative is fair
7 and warranted. Plaintiff came forward and worked directly with my office in analyzing the
8 claims and documents, providing valuable information and insights that benefitted the class (see
9 his declaration for supporting information). Then, during the settlement process, he agreed to a
10 much broader release than any class member, as he released all claims and gave a 1542 waiver
11 while foregoing his right to bring individual claims against Defendant. Indeed, Plaintiff's
12 participation was an essential element of Defendant's desire to mediate and of the pre- and post-
13 mediation analysis that allowed my office to settle the case. Of course, Plaintiff also took on
14 various risks, including the risk that he could have been ordered to pay Defendant's costs if he
15 lost and the risk of retaliation and being black-balled in the industry. Defendant does not oppose
16 the requested service award.

17 **SUBMISSION TO THE LWDA**

18 30. The Motion for Final Approval and supporting declarations have concurrently
19 been submitted to the LWDA. (See **Exhibit C**).

20 **EXHIBITS AND CONCLUSION**

21 31. The Settlement Agreement is attached hereto as Exhibit A.

22 32. Attached hereto as Exhibit B is a true and correct copy of an itemized statement
23 of my firm's litigation costs.

24 33. The LWDA's confirmation of receipt of this Motion and Declaration is attached
25 hereto as Exhibit C.

26 34. For the foregoing reasons, it is respectfully requested that the Court grant final
27 approval of the settlement as being fair, reasonable, and in the best interest of the class, and
28 approve the requested attorneys' fees, costs, and enhancements.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on August 16, 2024, at Riverside, California.

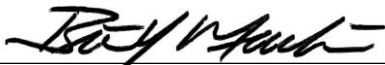
3
4 By: 
5 Brian J. Mankin, Esq.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “A”

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

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

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

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
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. 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
 Riverside, CA 92504
 Tel: (951) 320-1444 | Fax: (951) 320-1445

9 To Defendant:

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

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

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

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

Settlement Agreement is contractual and not merely a recital.

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

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

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

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

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

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

1
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

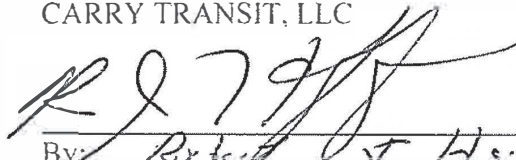
16 

17 Brian J. Mankin
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 19, 2024

DEFENDANT:
CARRY TRANSIT, LLC


By: Robert J. Hewitt
Title: CEO

Dated: March 15, 2024

DEFENDANT'S COUNSEL:
LITTLER MENDELSON, P.C.



Marlene S. Muraco
Attorneys for Defendant

END OF DOCUMENT

EXHIBIT “B”

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00493 Mittie v Carry Transit
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Willie Mittie</u> <u>14000-00493 Mittie v Carry Transit</u>									
03-09-2022	Approved		Non-Billable	E112 Court fees L.	Grossi, Tracie	75.00	0.00	1.00	75.00
Fee to LWDA to submit PAGA ltr									
03-09-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	1,496.84	0.00	1.00	1,496.84
OneLegal Order #17829387 - file complaint									
03-09-2022	Approved		Non-Billable	E101 Copying L.	Grossi, Tracie	0.20	0.00	56.00	11.20
56 copies @ \$0.20 for LWDA and letters to employer									
03-17-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	20.02	0.00	1.00	20.02
OneLegal Order #17873645 - file POSS									
03-17-2022	Approved		Non-Billable	Attorney Service	Aguilera, Monica A	63.65	0.00	1.00	63.65
Bosco Inv 6799098 Serve: Carry Transit, LLC, a Delaware Limited Liability Company Summons; Complaint; Civil Case Cover Sheet Addendum; Notice of Case Management Conference; Department 23 Information; Initial Case Management Order; ADR Court; Alameda County Superior Court- Oakland									
03-17-2022	Approved		Non-Billable	Attorney Service	Aguilera, Monica A	163.60	0.00	1.00	163.60
Bosco Inv 6799116 Serve: Heniff Transportation Systems, LLC, a Delaware Limited Liability Company Summons; Complaint; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum; Notice of Case Management Conference; Department 23 Information; Initial Case Management Order; ADR Court; Alameda County Superior Court- Oakland									
03-31-2022	Approved		Non-Billable	E108 Postage L.	Grossi, Tracie	17.32	0.00	1.00	17.32
Postage for the month of March 2022									
06-24-2022	Approved		Non-Billable	Attorney Service	Chianto, Tracie	12.87	0.00	1.00	12.87
OneLegal Order #18353694 - File First Amended Complaint (rejected)									
07-15-2022	Approved		Non-Billable	E112 Court fees	Chianto, Tracie	4.00	0.00	1.00	4.00
Fee for copy of documents									
07-20-2022	Approved		Non-Billable	Attorney Service	Chianto, Tracie	20.02	0.00	1.00	20.02
OneLegal Order #18580675 - File Joint Statement and Declarations									
07-20-2022	Approved		Non-Billable	Attorney Service	Chianto, Tracie	40.61	0.00	1.00	40.61
OneLegal Order #18586975 - file Stipulation to File FAC									

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00493 Mittie v Carry Transit
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Willie Mittie</u> <u>14000-00493 Mittie v Carry Transit</u>									
07-28-2022	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	2.00	0.00	1.00	2.00
Alameda Superior Court fee for copy of minute order									
08-04-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	20.02	0.00	1.00	20.02
Onelgal Order #18670141 - File Ntc of Change of Address									
08-05-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	20.02	0.00	1.00	20.02
Onelgal Order #18680760 - File Amended Complaint									
01-18-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	20.49	0.00	1.00	20.49
Onelgal Order #19653215 - file joint statement									
03-02-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	20.49	0.00	1.00	20.49
Onelgal Order #19930613 - File Joint Statement									
05-12-2023	Approved		Non-Billable	E125 Mediation fees	Chiarito, Tracie	7,450.00	0.00	1.00	7,450.00
Signature Resolution Inv #46605 for 8/22/23 mediation with Judge Amy Hogue									
07-06-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	20.49	0.00	1.00	20.49
Onelgal Order #20734079 - file Joint Statement									
10-10-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	33.82	0.00	1.00	33.82
Onelgal Order #21369988 and 21388722 - file Joint Statement									
11-03-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	20.49	0.00	1.00	20.49
Onelgal Order #21563632 - file Joint Statement									
12-15-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	33.82	0.00	1.00	33.82
Onelgal Order #21829672 & 21835314 - file Joint Statement									
02-01-2024	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	2.00	0.00	1.00	2.00
Receipt for Alameda Superior Court - copy of Minute Order									
03-29-2024	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	84.32	0.00	1.00	84.32
Onelgal Order #22564602 - file MPA									

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00493 Mittie v Carry Transit
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Willie Mittie</u>									
<u>14000-00493 Mittie v Carry Transit</u>									
08-16-2024	Approved		Non-Billable	Attorney Service	Chiarto, Tracie	150.00	0.00	1.00	150.00
Estimated cost to file MFA and supporting documents via OneLegal									
Project Total									9,803.09
Client Total									9,803.09
Grand Total									9,803.09

EXHIBIT “C”