

1 **I, FARZAD RASTEGAR, RESPECTFULLY DECLARE AS FOLLOWS:**

2 1. I am now and have been at all times relevant to this Declaration an Active
3 Member of the State Bar of California, an officer and shareholder of Rastegar Law Group, A
4 Professional Corporation ("Rastegar Law Group"), and Class Counsel of record in the action
5 entitled *Versel Benjamin v. Lux Bus America Co.* (Case No. 30-2016-00870583-CU-OE-CXC).
6 I make this declaration on the basis of personal firsthand knowledge unless another source of
7 information or belief clearly appears from the context, and as to all such matters I believe them
8 to be true. If called as a witness, I could and would readily and competently testify to all matters
9 stated within.

10 2. I make this declaration in support of Plaintiff's Motion for Preliminary Approval
11 of the Joint Stipulation of Settlement and Release to Settle Class Action in the above-referenced
12 Class Action.

13 3. On August 19, 2016, Named Plaintiff Versel Benjamin ("Plaintiff") filed a
14 putative wage and hour class action lawsuit against Defendant Lux Bus America Co.
15 ("Defendant"). The action was brought on behalf of a proposed class comprised of Defendant's
16 current and former employees who worked for Defendant in California.

17 4. The Complaint alleges causes of action for: (1) failure to provide required meal
18 periods; (2) failure to provide required rest periods; (3) failure to pay overtime compensation; (4)
19 failure to pay minimum and straight time wages; (5) failure to provide accurate payroll statements
20 and maintain required records; (6) failure to pay all wages due upon termination or resignation;
21 (7) unlawful business practices; (8) unlawful business practices; and (9) a representative action
22 under the Private Attorneys General Act of 2004 ("PAGA").

23 5. Defendant Lux Bus America Co., Inc. ("Defendant" or "Lux Bus") has two
24 California locations –Anaheim and San Jose. Defendant provides daily sightseeing tours, private
25 charters and corporate shuttles to a variety of clients, but the bulk of their business consists of
26 sightseeing tours, with a fleet of vehicles ranging from large SUVs to large coach busses.
27 Defendant's Southern California service locations include Anaheim, Los Angeles, Newport
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1 Beach, Palm Springs, San Diego, and Santa Barbara. Defendant also provides charter services to
2 Las Vegas, Nevada. In Northern California, Lux Bus' service locations include Cupertino,
3 Oakland, Mountain View, San Francisco, San Jose, and Santa Cruz. Plaintiff Versel Benjamin
4 ("Plaintiff") worked for Lux Bus from around September 2012 to June 2015 as an hourly, non-
5 exempt bus driver, picking up tourists from hotels and driving them to Defendant's service
6 locations in Southern California and Las Vegas, Nevada and has alleged he was subjected to the
7 illegal practices set forth in his complaint. In so doing, Plaintiff alleges that he and the other
8 hourly employees were subject to similar common policies of not providing compliant meal and
9 rest periods, and all wages due.

10 6. The parties arrived at this settlement through arm's length bargaining following a full
11 day of mediation with mediator Steve Rottman, Esq., one of the foremost mediators of wage and hour
12 class actions in California. The parties went into mediation willing to explore the potential for a
13 settlement of the dispute, but each side was also committed and prepared to litigate its position
14 through trial and appeal if a settlement had not been reached. In preparation for the mediation,
15 Plaintiff's counsel spent an extensive amount of time reviewing and analyzing the sampling of
16 time punch and payroll data, and policy documents produced by Defendant. At the mediation, the
17 parties engaged in an intensive discussion regarding their respective evaluations of this matter and
18 the relevant legal arguments, and were able to reach an agreement that day. The parties then
19 prepared and fully executed a Memorandum of Understanding ("MOU") on the same day. As
20 such, the negotiations were at arm's length. A true and correct copy of the Joint Stipulation of
21 Settlement and Release to Settle Class Action is filed concurrently herewith.

22 7. The class consists of approximately 499 individuals as of August 28, 2017,
23 however the Parties have agreed that if the date this settlement is preliminarily approved by the
24 Court occurs after February 15, 2018, there will be a corresponding increase in the Gross
25 Settlement Fund on a pro-rata basis corresponding to the ratio of [new class members who
26 became members of the class after February 15, 2018 and before the Preliminary Approval Date]
27 / [499 class members as of the date of the August 28, 2017 Memorandum of Understanding].

8. The proposed settlement class (collectively “Class Members”) means any and all persons employed by Defendant Lux Bus America Co., Inc., with the job title of “driver”, or a job title that included the word “driver”, in Southern California, in the State of California from August 19, 2012 through the Preliminary Approval Date or December 31, 2017, and drivers or those with the job title that includes the word “driver”, employed in Northern California, in the State of California, from November 25, 2014 through the Preliminary Approval Date or December 31, 2017. The starting eligibility date is the four-year period from the date of the filing of the complaint pursuant to the four-year statute of limitations that applies to Plaintiff’s cause of action for violation of the Business & Professions Code. The definition of the proposed class distinguishes Northern and Southern California and for a different starting period because Defendant settled a case covering the same claims and employees up to November 25, 2014 in Defendant’s Northern California locations. The prior case is *Clifford Bradford v. Lux Bus America Co.*, San Francisco Superior Court, Case No. CGC-12-526030, release date ending November 25, 2014). Defendant presented information regarding the *Bradford* class action settlement, which is a relatively comparable settlement amount, also based on workweeks. This prior approved *Bradford* settlement both underscores the reasonableness of the settlement amount in our case, and provides the reason for the Northern California drivers to have a separate release period.

Discovery and Investigation

9. Discovery and investigation undertaken by Plaintiff was extensive. Prior to the mediation, Defendant produced several thousand pages of time punch and payroll documents, in addition to relevant policy documents for review. Class Counsel also spent a significant amount of time reviewing these documents and, with the assistance of a retained expert, analyzing the time records to determine Defendant's potential damage exposure, necessary to evaluate the risks for liability on the amount of wages owed, as well as damages data for the Class, which has been used to calculate the damages exposure for the class and allocation of payments. Class Counsel then used this analysis in conjunction with the anecdotal evidence provided by Plaintiff Versel

1 Benjamin, as well as his personnel file. Based on these efforts, the information provided and the
2 expert analysis, Class Counsel was able to act intelligently and effectively in negotiating the
3 proposed settlement. In my opinion, the Gross Settlement Amount of \$225,000.00 and
4 approximately \$450.00 on average per full-time employee represents an excellent value for the
5 class members in this case considering the risks set forth below.

6 **Named Plaintiff's Role**

7 10. Plaintiff has been instrumental in providing critical information and evidence used
8 to establish the existence of the alleged unlawful practices pertaining to all the hourly, non-exempt
9 employees. Plaintiff provided pre-litigation information to his attorneys that helped identify, not
10 only the claims, but also specific common practices among class members and how they affected
11 him and his co-workers. Plaintiff also provided information for use in preparing for mediation, by
12 meeting with and assisting Class Counsel in clarifying important written policies, and time-keeping
13 and break scheduling practices, as well as helping Class Counsel identify witnesses. Plaintiff also
14 attended the mediation, and was critical in bringing about the Settlement Agreement. In the final
15 analysis, this Class Action would not have been possible without the aid of Plaintiff Versel
16 Benjamin, who put his own time and effort into this litigation, sacrificed the value of his own
17 individual claims, and placed himself at risk for the sake of the class members. Moreover, Plaintiff's
18 name and personal allegations are memorialized in the Complaint thus exposing himself to potential
19 liability for costs and industry/employer blacklisting. The requested incentive award of \$4,500.00 to
20 the Named Plaintiff, just 2% of the Maximum Settlement Amount, is therefore reasonable to
21 compensate Plaintiff for his active participation in this lawsuit.

22 **Damage Analysis**

23 11. Plaintiff alleges that Defendant has had a policy and practice that denies
24 employees off-duty meal and rest periods due to a common policy that requires drivers to
25 continuously attend to their buses and vehicles throughout the shift including while on breaks.
26 From the analysis of the sampling of time records produced by Defendant, Plaintiff's counsel
27 found approximately 78% of shifts to be greater than 3.5 hours, 56.6% of all shifts to be greater
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1 than 5 hours, and 45% of shifts to be greater than 6 hours. No time records exist that track
2 employees rest periods and the time records do not show actual recordation of meal periods.

3 Meal Periods (assuming a 100% violation rate):

4 100 employees (approximate number of current employees)

5 x 5 shifts per week

6 x 50 weeks per year

7 x 5 years (August 2012 to August 2017)

8 x \$14.00 (estimated average pay)

9 x 56.6% of shifts greater than 5 hours

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\$990,500.00

12 Assuming that class members lawfully waived meal periods for shifts between 5 and 6
13 hours, as alleged, then Plaintiff's analysis would only consider shifts greater than 6 hours (only
14 45%), resulting in meal period damages of **\$787,500.00**.

15 Rest Periods (assuming a 100% violation rate):

16 100 employees (approximate number of current employees)

17 x 5 shifts per week

18 x 50 weeks per year

19 x 5 years (August 2012 to August 2017)

20 x \$14.00 (estimated average pay)

21 x 78% of shifts greater than 3.5 hours

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\$1,365,000.00

24 Off-the-clock/Overtime

25 An analysis of Defendant's daily logs and payroll records, when counting "off duty"
26 hours in the middle of a shift as time worked, found a substantial amount of that time was not
27 paid at the overtime rate of pay. Plaintiff's expert analyzed the class data produced by
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Defendant and found approximately 12,091 hours not paid at the overtime rate of pay for the class.

12,091 hours

x \$14.00 per hour

= \$169,274

x .5 (the difference in unpaid overtime)

\$84,637.00

Total Damages: \$2,440,137.00

Penalties

12. Plaintiff and all similarly situated putative class members are also entitled to civil penalties as a result of the penalties for the violations set forth above.

California Labor Code §2699 (Meal and Rest Periods)

Under Labor Code § 2699, for its failure to provide meal periods as required by IWC Order 9-2001 and Labor Code § 226.7, Defendant is liable for each illegal practice and is subject to \$100 for each initial violation for each employee for each pay period. Defendant is therefore subject to the following penalties for each of the practices described: 100 employees x \$100.00 per employee x 26 pay periods x 2 years x 2 (one meal period and one rest period violation each day) = **\$1,040,000.00**.

Labor Code § 1174.5

For its failure to maintain accurate payroll records, by not accounting for premium payments owed to class members, and off-the-clock work, Defendant is liable for Labor Code §1174.5 penalties calculated as follows: 100 employees x \$500.00 per employee x 2 years = **\$100,000.00**

California Labor Code § 203

For failure to pay its employees all earned and unpaid wages to discharged or quitting employees in a timely fashion, Defendant is liable for waiting time penalties. Under California Labor Code § 203, the wages of the discharged or quitting employee continue as a penalty from

1 the due date at the same rate until paid for up to 30 days. For purposes of these penalties,
2 Plaintiff estimates that the number of discharged or quitting employees in the putative class is
3 about 50. Based on this, the calculations are as follows: \$14.00 average wage x 8 hours per day x
4 30 days x 400 former employees = **\$1,344,000.00.**

5 California Labor Code §1197.1

6 Under Labor Code § 1197.1, Plaintiffs are entitled to penalties in the amount of \$100 for
7 each underpaid employee for each pay period, regardless of whether the violation is intentionally
8 committed. The calculations are as follows: 100 employees x \$100.00 per employee x 26 pay
9 periods x 2 years = **\$520,000.00.**

10 **Total Penalties = \$3,004,000.00**

11 As a result of the above, Plaintiff contends that Defendants' exposure for damages and
12 penalties is **\$5,444,137.00.** Defendant contends that the exposure is \$0.00. In assessing the
13 fairness of the settlement, Plaintiff had to be cognizant of the risk of a zero-dollar damage and
14 penalty award in this case.

15 **Loss at Trial**

16 13. Although Plaintiff is confident that any trial would be meritorious and successful,
17 he is not blind to the significant risk of losing such a trial, including the enormous costs, and
18 potentially the hurdle that must be overcome on appeal: an abuse of discretion standard. Further,
19 Plaintiff has asserted claims in the litigation relying on a common policies and practice of
20 understaffing and on-duty meal and rest breaks, which a reasonable trier of fact could construe
21 otherwise. Through investigation, Plaintiff has found these practices to be common among
22 employees throughout California, however drivers operate a variety of routes for different clients
23 and tours, and Defendant allows drivers to self-manage meal and rest breaks. Moreover, Lux Bus
24 provides drivers with daily work orders with a suggested/planned trip schedule that includes
25 allotted time for breaks on shifts long enough to require them, while insisting that drivers are not
26 necessarily required to attend to their vehicles at all times. As such, a reasonable trier of fact
27 could also conclude that drivers voluntarily choose to forego breaks, thereby creating possible
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1 issues as to individualized inquiries.

2 14. Moreover, Plaintiff has alleged claims asserting a violation of Labor Code Section
3 201-203 penalties. These portions of the Labor Code provide for penalties up to a maximum of
4 thirty (30) days of pay if an employer fails to pay an employee all wages due upon separation of
5 employment. This claim is derivative of the meal and rest period claims inasmuch as Plaintiff
6 asserts that meal and rest period penalties arising from Defendant's scheduling and payroll
7 practices, were due and owing, and not paid to all of the separated class members. The problem
8 in proving this claim is that Plaintiff must establish the failure to pay the wages due at the time of
9 separation was *willful*. Given the legally undetermined and evolving nature of an employer's
10 obligations with regard to providing meal and rest periods, and in connection with potential
11 individualized inquiries pertaining to scheduling practices, the Defendant has a potentially
12 insurmountable argument that it had a good faith belief at the time of the applicable class
13 members' separation from employment it was not obligated to pay them for any missed meal and
14 rest periods, and its failure to have done so was not willful.

15 15. Furthermore, Plaintiff has alleged claims that the company is liable for civil
16 penalties under the California Private Attorneys General Act ("PAGA"). However, penalties are
17 discretionary and, thus, uncertain. Given the uncertain nature of the underlying claims, the value
18 of the claims under this statute are significantly lower.

19 ***Brinker Case***

20 16. *Brinker Restaurant Corp. vs. Superior Court*, 53 Cal. 4th 1004 (2012) was decided
21 by the California Supreme Court in 2012 and remains controlling law. The decision in *Brinker*,
22 though favorable in many aspects, adopted a "provide" standard for meal periods as opposed to
23 an "ensure" standard, creating a slightly higher bar relating to Plaintiff's meal and rest period
24 claims.

25 **Drivers Are Potentially Exempt from the Claims Asserted Herein**

26 17. Some of the drivers, arguably, based on their routes and vehicles may be exempt
27 from overtime laws under California's Industrial Welfare Commission ("IWC") Wage Order No.
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1 9, subdivision 3(L) and title 13 of the California Code of Regulations, subchapter 6.5, Section
2 1200, which applies to the regulation of tour buses. The argument, if successful, would nullify all
3 the drivers' overtime claims.

4 18. Additionally, pending federal legislation may also nullify the meal and rest break
5 claims in their entirety as well. At the time of mediation, the United State House of Representatives
6 Appropriations Committee had approved the Fiscal Year 2018 Transportation, Housing and Urban
7 Development Appropriations Bill, which provides that federal law retroactively preempts state
8 regulations for commercial vehicle drivers' meal and rest breaks, if adopted by Congress, it could
9 significantly impact, if not eliminate, meal and rest break claims for overtime-exempt drivers in
10 California.

11 **Other Impediments to a Successful Outcome**

12 19. Litigating and proving the amount of wages due to each individual class member
13 would be an expensive, time-consuming, and extremely uncertain proposition. A review of the
14 time and payroll data revealed marginal and sporadic support for Plaintiff's overtime and minimum
15 wage ("off-the-clock") claims, and also, without time data pertaining rest periods, winning at trial
16 on these off-the-clock and rest period claims would require efforts to obtain anecdotal and survey
17 evidence from hundreds of class members. As such, a thorough evaluation of the evidence of all
18 employees during the class period would be a financially monumental task.

19 20. Additionally, obtaining the cooperation of current employees would be a difficult
20 task, given their reluctance to openly aid the prosecution of a lawsuit against their employer in
21 comparison to the relative ease with which the Defendant would be able to obtain the cooperation
22 of its current employees in opposing the class claims. This would be particularly problematic,
23 again, with respect to Plaintiff's off-the-clock and rest period claims. As stated, since employers
24 are not required to record 10-minute rest breaks, much of Defendant's alleged uncommon rest
25 period policy would have to be corroborated by substantial amount of anecdotal evidence.

26 21. Thus, I am of the opinion that the Gross Settlement Amount is fair, reasonable and
27 in the best interests of the class.

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1 have a high level of knowledge and experience in areas of wage and hour class actions, and labor
2 and employment law. Currently, more than half of Rastegar Law Group's active caseload
3 includes wage and hour class action cases. Besides myself, my firm includes attorneys with the
4 following qualifications:

- 5 a. Douglas W. Perlman, University of California, Davis School of Law, over 23
6 years of litigation experience;
- 7 b. Thomas S. Campbell, Southwestern University School of Law, over 18 years of
8 litigation experience;
- 9 c. Candace Kwon, University of Hawaii School of Law, over 14 years of litigation
10 experience;
- 11 d. S. Emi Ikeda Minne, UCLA School of Law, tenth year associate; and
- 12 e. Sharon W. Lin, UCLA School of Law, ninth year associate.
- 13 f. Joshua N. Lange, UCLA School of Law, eighth year associate.
- 14 g. Kieran Hartley, University of Virginia School of Law, third year associate.
- 15 h. Nida Siddiqui, University of California, Davis School of Law, first year associate.

16 26. My office is qualified to handle this litigation because we are experienced in
17 litigating Labor Code violations in both individual and class actions. I and the other attorneys at
18 my office have served as lead counsel in numerous wage and hour class actions, and have
19 successfully negotiated several settlements, including multiple seven-figure cases, amounting to
20 over \$100 million in settlements.

21 27. Rastegar Law Group has a number of published appellate victories which have
22 significantly advanced the rights of employees, including:

- 23 a. *Yocupicio v. PAE Group, LLC, et al.*, 795 F.3d 1057 (9th Cir. 2015), an important
24 decision concerning federal jurisdiction under the Class Action Fairness
25 Act ("CAFA"), holding that non-class claims, such as claims under California's
26 Private Attorney General Act ("PAGA"), cannot be used to calculate CAFA's
27 amount in controversy. This case is cited in several leading treatises such as
28 Wright & Miller's *Federal Practice & Procedure*, and *Newberg on Class Actions*.

1 b. *Rodriguez v. EME, Inc.*, 246 Cal.App.4th 1027 (2016), the first published
2 appellate decision defining the permissibility of combining rest breaks.

3 28. My predecessor firm, Rastegar & Matern, had a number of appellate victories
4 including several published opinions - *Franco v. Athens Disposal Company, Inc.* (March 10,
5 2009) 171 Cal.App.4th 1277; *Gutierrez v. California Commerce Club* (August 2, 2010) 187
6 Cal.App.4th 969; *Pantoja v. Anton* (August 9, 2011) 198 Cal.App.4th 87; *Fuentes v. Autozone,*
7 *Inc.* (November 16, 2011) 200 Cal.App.4th 1221; *Ventura v. ABM Industries, Inc.* (2012) 212
8 Cal.App.4th 258; *Franco v. Arakelian Enterprises, Inc.* (2012) 211 Cal.App.4th 314 – and other
9 non-published appellate victories. Moreover, Rastegar & Matern was successful in procuring
10 class certification of several wage and hour class action lawsuits, i.e., *Gutierrez v. Dynaflex*
11 *Products*, Case No. BC 368749; *Garmendia v. Fortune Fashions Industries, LLC*, Case No. BC
12 389960; *Mendoza v. National Gypsum Services Company*, Case No. BC366877; two relatively
13 recent cases in the Superior Court for the County of San Bernardino, *Oliva v. Coronado Stone*,
14 Case No. CIVSS806131 and *Suchilt v. Syed Irfan Ahmad*, Case No. CIVDS1010505; one in the
15 Superior Court for the County of Los Angeles, *Gutierrez v. California Commerce Club*, Case No.
16 BC360704; one in the Superior Court for the County of Riverside, *Sanchez v. Jose's Mexican*
17 *Food, Inc.*, Case No. RIC1213710; and one in the District Court for the Southern District of
18 California, *Hines v. KFC U.S. Properties, Inc.*, Case No. 3:09-cv-02422.

19 29. My office invested significant time and resources into the case, with payment
20 deferred to the end of the case, and then, of course, contingent on the outcome. My office's
21 efforts included, without limitation, the following: interviews with the Plaintiff; review of
22 documents produced by the Plaintiff; preparation of multiple drafts of the original class action
23 complaint; numerous conferences and correspondence with Defendant's counsel to obtain
24 relevant documents and information through informal discovery; review of thousands of pages of
25 policy documents, employment records, and time and payroll records provided by Defendant;
26 analyze and interpret time records produced by Defendant covering hundreds of shifts for covered
27 employees, and to format said data in a manner that could be used to support Plaintiff's legal
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1 theories and damage analysis; legal research regarding Defendant's practices; research and
2 preparation of Plaintiff's mediation brief; attendance at a full day private mediation; drafting and
3 negotiations of the Settlement Agreement; drafting, negotiations, and revisions of Class Notice;
4 preparation and filing of the motion for preliminary approval and order; and anticipation of
5 responding to telephone calls from class members.

6 30. It is further estimated that my office will need to expend at least another 15-20
7 hours to monitor the process leading up to the final approval and payments made to the class. My
8 office also bears the risk of taking whatever actions are necessary if Defendants fail to pay. In
9 two recent cases, that has meant over 50 hours spent post-final approval in efforts to collect on
10 behalf of the class.

11 31. My office has also incurred over \$11,200.00 in expenses to date. These costs
12 include: \$3,000.00 for expert fees; \$1,482.26 filing fees; \$6,000.00 for mediation; \$279.50
13 photocopies; \$205.08 research; \$131.86 in messenger fees; \$7.50 records retrieval; \$21.60
14 mileage costs, \$23.67 postage fees; \$70.84 meals. I anticipate another few hundred dollars in
15 costs between now and final approval in order to cover filing fees, messenger fees, further legal
16 research and travel expenses for court appearances. I understand that the Settlement Agreement
17 provides for \$15,000.00 in total attorney expenses, however, our final approval motion will seek
18 only the actual costs.

19 32. Because most individuals cannot afford to pay for representation in litigation on an
20 hourly basis, Rastegar Law Group represents virtually all of its employment law clients on a
21 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time and
22 costs unless we prevail at trial or successfully settle our clients' cases. Because Rastegar Law
23 Group is taking the risk that we will not be reimbursed for our time and costs unless our client
24 settles or wins his or her case, we cannot afford to represent an individual employee on a
25 contingency basis if, at the end of our representation, all we are to receive is our regular hourly
26 rate for services. It is essential that we recover more than our regular hourly rate when we win if
27 we are to remain in practice so as to be able to continue representing other individuals in civil
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1 rights employment disputes.

2 33. I believe that the fee and costs provision is reasonable. The fee percentage
3 requested is less than the usual customary percentage fee for most employment cases. Moreover,
4 the efforts of my office have resulted in substantial benefits to the class members, in the form of a
5 substantial settlement fund established to compensate settlement class members for missed meal
6 periods and rest periods, among the other wage and hour violations noted above. I am informed
7 and believe that, without the efforts of my office, the Labor Code and Wage Order violations
8 alleged in the Complaint would have gone completely unremedied. The \$78,750.00 fees award,
9 i.e. 35% of Settlement Amount, and \$15,000.00 cost award provided for in the Settlement are
10 reasonable given the result achieved.

11 34. For all the reasons provided above, I respectfully request that this Court grant
12 preliminary approval of the proposed settlement and certification of the provisional settlement
13 class.

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

16 Executed on February 6, 2018, at Torrance, California.

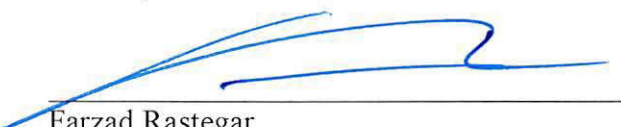
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18 _____
19 Farzad Rastegar
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EXHIBIT 1

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court, that the full and final Settlement of this Action shall be effectuated upon and subject to
3 the following terms and conditions. Capitalized terms shall have the meanings set forth in Article I
4 or as defined elsewhere in this Joint Stipulation of Settlement and Release to Settle Class Action
5 (hereinafter "Agreement," "Settlement," or "Settlement Agreement").

6 This Agreement is made and entered into by and between Plaintiff Versel Benjamin, on
7 behalf of himself and others similarly situated ("Plaintiff"), on the one hand, and Defendant Lux
8 Bus America Co. ("Defendant"), on the other hand. Plaintiff and Defendant collectively are
9 referred to in the Agreement as "the Parties."

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay no more than the settlement sum of Two Hundred
12 Twenty Five Thousand (\$225,000.00) as provided in Section 3.06(a) below ("Gross Settlement
13 Fund") upon the terms and conditions of the Agreement and for the consideration set forth herein,
14 including, but not limited to, a release of claims by Named Plaintiff Versel Benjamin as described
15 herein, and the release of the Class Members' claims as set forth in this Agreement.

16 ARTICLE I

17 DEFINITIONS

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. "Action" means the Complaint filed in Orange County Superior Court on or about
21 August 19, 2016 Versel Benjamin, *individually, and on behalf of all other similarly situated*
22 *current and former employees of Defendant v. Lux Bus America Co., and DOES 1 through 100,*
23 *inclusive*, Orange Superior Court Case No. 30-2016-00870583-CU-OE-CXC.

24 b. "Agreement" means this Joint Stipulation of Settlement and Release to Settle Class
25 Action, including Exhibits "A" and "B" attached hereto.

26 c. "Class" means all persons employed by Defendant Lux Bus America Co. with the
27 job title of "driver", or a job title that included the word "driver", in Southern California, in the
28 State of California from August 19, 2012 through the Preliminary Approval Date or December 31,

1 2017, whichever is later, and drivers or those with the job title that includes the word “driver”,
2 employed in Northern California, in the State of California, from November 25, 2014 through the
3 Preliminary Approval Date or December 31, 2017, whichever is later.

4 d. “Class Counsel” or “Plaintiff’s Counsel” means the attorneys for the Settlement
5 Class, who are:

6 RASTEGAR LAW GROUP, APC
7 Farzad Rastegar, State Bar No. 155555
8 farzad@rastegarlawgroup.com
9 Joshua Lange, State Bar No. 269016
10 josh@rastegarlawgroup.com
11 Kieran Hartley, State Bar No. 301947
12 kieran@rastegarlawgroup.com
13 22760 Hawthorne Blvd., Suite 200
14 Torrance, California 90505
15 Telephone: (310) 961-9600
16 Facsimile: (310) 961-9094

17 e. “Class List” means a complete list of all Class Members that Defendant will
18 compile, based on its business records, and provide to the Settlement Administrator within twenty-
19 one (21) days after the Court grants Preliminary Approval of Settlement. The Class List shall be
20 formatted in Microsoft Office Excel and shall include each Class Member’s full name, his or her
21 last known home address, telephone number, Social Security number, and number of Workweeks
22 worked during the Class Period.

23 f. “Class Member(s)” mean(s) all members of the Class. Defendant represents that
24 there are 510 Class Members as of August 28, 2017.

25 g. “Class Period” means August 19, 2012 through the Preliminary Approval Date for
26 persons employed by Defendant Lux Bus America Co. with the job title of “driver”, or a job title
27 that included the word “driver”, in Southern California, and November 25, 2014 through the
28 Preliminary Approval Date for persons employed by Defendant Lux Bus America Co. with the job
title of “driver”, or a job title that included the word “driver”, in Northern California or December
31, 2017, whichever is later.

h. “Court” means the Orange County Superior Court in which the Action is pending.

i. “Date of Finality” means the date when the Class Action Judgment and/or Other
Final Approval Order becomes Final.

1 j. "Defendant" means Lux Bus American Co.

2 k. "Defense Counsel" means:

3 CALL & JENSEN, APC
4 Jacqueline Beaumont (State Bar No. 253776)
jbeaumont@calljensen.com
5 Joshua G. Simon (State Bar No. 264714)
jsimon@calljensen.com
6 610 Newport Center Drive, Suite 700
Newport Beach, California 92660
7 Telephone: (949) 717-3000
Facsimile: (949) 717-3100

8 l. "Dispute/Exclusion/Objection Deadline Date" means the deadline to postmark and
9 submit dispute of the estimated gross Settlement Share, Opt-Out Request, or objection, which is
10 forty-five (45) calendar days from the date that the Class Notice is first mailed by the
11 Settlement Administrator.

12 m. "Disposition" means the method by which the Court adopts the terms of the
13 Settlement Agreement, which may be by judgment or other final order, and retains jurisdiction over
14 the enforcement, implementation, construction, administration, and interpretation of the
15 Settlement Agreement.

16 n. "Enhancement Award" means a monetary amount of up to four thousand five
17 hundred dollars (\$4,500.00) for Plaintiff Versel Benjamin which, subject to Court approval, will be
18 paid pursuant to the terms of this Agreement.

19 o. "Final" means ten (10) calendar days from the following: (i) the Court's Disposition
20 approving this Agreement if no objection is asserted at the Final Fairness and Approval Hearing; or
21 (ii) if an objection is asserted at the Final Fairness and Approval Hearing, but the objection is
22 withdrawn thereafter, the date the objection is withdrawn; or (iii) if an objection is asserted at the
23 Final Fairness and Approval Hearing, and the objection is not withdrawn, the expiration of the time
24 for filing or noticing any appeal of the Judgment; or (iv) if there is an appeal of the Court's
25 Judgment, the latest of: the date the Judgment is affirmed on appeal, the date of dismissal of such
26 appeal, or the expiration of the time to file a petition to the Supreme Court; or, (v) if a petition is
27 filed, the date of denial of the petition, or the date the Judgment is affirmed pursuant to
28 such petition.

1 p. "Final Approval Hearing" means the hearing at which the Court enters a judgment
2 or other order approving the Settlement and Agreement and terminating the Action.

3 q. "Final Order Approving Settlement of Class Action" or "Final Order" means the
4 final formal court order signed by the Court at or after the Final Approval Hearing in accordance
5 with the terms herein approving this Agreement.

6 r. "General Release of all Claims" is the general release of all claims, including a Civil
7 Code Section 1542 waiver, executed by Named Plaintiff, which is in addition to the release of
8 claims by Participating Class Members.

9 s. "Gross Settlement Fund" means the maximum settlement sum of Two Hundred
10 Twenty-Five Thousand Dollars (\$225,000.00), which is non-reversionary, to be paid by Defendant
11 under the terms and conditions of this Agreement. One Thousand Dollars (\$1,000.00) of the Gross
12 Settlement Fund will be allocated to PAGA penalties, seventy-five percent (75%) of which, or
13 Seven Hundred Fifty Dollars (\$750.00), will be paid to the LWDA, and the remainder of which
14 will be included in the payment to the Participating Class Members on a pro-rata basis. The Gross
15 Settlement Fund excludes employer-paid payroll taxes.

16 t. "Individual Settlement Payments" or "Verified Settlement Class Member Payments"
17 means the amounts of money from the Net Settlement Amount that shall be paid to the Verified
18 Settlement Class Members. Individual Settlement Payments will be each Verified Settlement Class
19 Member's share of the Net Settlement Amount (which share shall be determined by the
20 calculations provided in this Agreement), minus applicable authorized withholdings as set forth
21 herein in this Agreement.

22 u. "LWDA" means the California Labor and Workforce Development Agency.

23 v. "Memorandum of Settlement" refers to the document that was fully executed by the
24 Parties on or about August 28, 2017, which outlines the settlement reached by the Parties following
25 mediation that was held on August 28, 2017.

26 w. "Named Plaintiff" or "Plaintiff" means Versel Benjamin.

27 x. "Net Settlement Amount" means the Gross Settlement Fund of Two Hundred
28 Twenty Five Thousand Dollars (\$225,000.00) less all of the following: (a) all costs of settlement

1 administration performed by the mutually agreed upon settlement administrator, Phoenix
2 Settlement Administrators, not to exceed \$12,000.00; (b) Enhancement Award to Plaintiff
3 (\$4,500.00); (c) \$750.00 payment to the LWDA; and (d) documented attorneys' costs for Plaintiff's
4 counsel (not to exceed \$15,000.00) and attorneys' fees for Plaintiff's Counsel (up to \$78,750.00).

5 y. "Non-Participating Class Member(s)" means those Class Members who submit to
6 the Settlement Administrator a valid and timely Opt-Out Request pursuant to Section 3.04(b)
7 below.

8 z. "Notice Packet" means the Notice of Proposed Class Action Settlement substantially
9 in the form attached hereto as Exhibit "A," and the Mailing Envelope substantially in the form
10 attached hereto as Exhibit "B."

11 aa. "Opt-Out Request" means a written request to be excluded from the Class pursuant
12 to Section 3.04(b) below.

13 bb. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code
14 sections 2698 *et seq.*

15 cc. "Parties" means collectively Plaintiff and Defendant.

16 dd. "Preliminary Approval Date" means the date on which the Court preliminarily
17 approves the Settlement embodied in this Agreement, including, without limitation, the Notice of
18 Proposed Class Action Settlement, which is attached hereto as Exhibit "A," and the Mailing
19 Envelope substantially in the form attached hereto as Exhibit "B."

20 ee. "Settlement" means the resolution of this Action and all related claims effectuated
21 by this Agreement.

22 ff. "Settlement Class" consists of all Verified Settlement Class Members.

23 gg. "Settlement Administration Costs" means all costs incurred by the Settlement
24 Administrator in administration of the Settlement, including, but not limited to, any notices that
25 must be provided to the Class, calculating employer payroll taxes, performing address updates and
26 verifications as necessary prior to the first mailing, performing a single address follow-up on any
27 returned mail, calculating Individual Settlement Payments and tax withholdings, providing
28 declarations, generating Individual Settlement Payment checks and related tax reporting forms,

1 completing administrative work related to unclaimed checks, if any, generating checks to Class
2 Counsel for attorneys' fees and costs, and to Plaintiff for his Enhancement Award, and any other
3 actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of
4 this Agreement.

5 hh. "Settlement Administrator" means Phoenix Settlement Administrators which the
6 Parties have agreed will be responsible for the administration of the Settlement including, without
7 limitation, the distribution of the Individual Settlement Payments to be made by Defendant from
8 the Gross Settlement Fund and related matters under this Agreement.

9 ii. "Total Workweeks" means the total aggregate number of Workweeks of all Class
10 Members, as of December 31, 2017, or the date that the Court enters an order granting preliminary
11 approval, whichever is later.

12 jj. "Verified Settlement Class Members" or "Participating Class Members" means all
13 Class Members who do not timely submit an opt-out form to exclude themselves from the Class
14 pursuant to Section 3.04(b) below.

15 kk. "Workweek" means a week during the Class Period commencing on Sunday and
16 ending on the following Saturday in which a Class Member worked one or more days
17 for Defendant.

18 ARTICLE II

19 FACTUAL BACKGROUND

20 a. On or about August 19, 2016, Plaintiff Versel Benjamin filed a putative class action
21 alleging causes of action for: (1) failure to provide meal periods; (2) failure to provide rest periods;
22 (3) failure to pay overtime compensation; (4) failure to pay minimum wage and straight time
23 wages; (5) failure to provide accurate statements; (6) failure to pay all wages due to discharged or
24 quitting employees; (7) unlawful business practices; (8) failure to permit employee to inspect and
25 copy records; (9) a representative action under the Private Attorneys General Act of 2004
26 ("PAGA"), titled *Versel Benjamin, individually, and on behalf of all other similarly situated*
27 *current and former employees of Defendants v. Lux Bus America Co., and DOES 1 through 50,*
28 *Orange County Superior Court Case No. 30-2016-00870583-CU-OE-CXC.*

1 b. Defendant denies the allegations asserted in the Action, denies the violations of the
2 California Labor Code and California Business and Professions Code, denies any pendant or
3 related charges, denies violating any other law or right of Plaintiff or any Class Members, and
4 further denies liability to Plaintiff and Class Members.

5 c. On August 28, 2017, the Parties engaged in private mediation with Steve Rottman,
6 Esq., an experienced class action mediator, who assisted the parties in reaching a settlement. The
7 settlement discussions were conducted at arm's-length. The settlement is the result of an informed
8 and detailed analysis of the risks facing both parties in litigating this case, including but not limited
9 to, careful consideration of the legal and factual obstacles to Plaintiff's prospects of obtaining class
10 certification and on the merits, and Defendant's defenses, as well as Defendant's potential exposure
11 and the additional costs of litigating the Action.

12 d. It is the desire of the Parties to fully, finally, and forever settle, compromise and
13 discharge any and all known and unknown claims that were raised, or could have been raised
14 during the Class Period based upon the facts alleged in this Action. In order to achieve a full and
15 complete release of Defendant, each Class Member acknowledges that this Joint Stipulation of
16 Settlement and Release to Settle Class Action is intended to include in its effect all claims of any
17 nature that were raised in the Action, or could have been raised based upon the facts alleged in this
18 Action on behalf of Class Members, including, but not limited to (1) all statutory and common law
19 causes of action referenced in the Actions and corresponding provisions of the applicable Industrial
20 Welfare Commission Wage Orders, including, but not limited to (i) failure to pay overtime wages,
21 (ii) failure to pay accrued vacation wages, (iii) failure to pay all wages earned during each pay
22 period (including, but not limited to, overtime, double time, straight time, minimum wage, and/or
23 off-the-clock time), (iv) failure to provide adequate meal and rest periods or pay meal or rest period
24 premiums, (v) failure to pay timely wages upon cessation of employment, (vi) failure to furnish
25 accurate wage statements, (vii) failure to keep requisite payroll records, (viii) failure to reimburse
26 business expenses, or (2) any of the facts, transactions, events, occurrences, acts, disclosures,
27 statements, omissions, or failures to act which were or could have been asserted based on the facts
28 and claims pleaded in the Action, or (3) any cause of action or claim under the Business and

1 Professions Code section 17200 *et seq.* arising from items (1) or (2) above, or (4) any cause of
2 action or claim under the Private Attorneys General Act under Labor Code sections 2699 *et seq.*
3 arising from items (1) or (2) above.

4 e. It is the intention of the parties that this Stipulation of Settlement shall constitute a
5 full and complete settlement and release of all claims arising from the allegations of the Action on
6 behalf of Class Members, which release is set forth in Section 5.01 below.

7 f. Class Counsel has conducted a thorough investigation into the facts of this class
8 action case, including an extensive review of relevant documents, and has diligently pursued an
9 investigation of Class Members' claims against Defendant. Based on their own independent
10 investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for
11 the consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable, and
12 adequate and is in the best interest of the Settlement Class in light of all known facts and
13 circumstances, including the risk of significant delay, the risk the Settlement Class will not be
14 certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues.

15 g. The Parties agree to cooperate and take all steps necessary and appropriate to
16 consummate this Settlement through final approval and judgment.

17 h. The maximum total payment under the Settlement, including all attorneys' fees,
18 attorneys' costs, the Enhancement Award to the Named Plaintiff, Settlement Administration costs,
19 payment to the LWDA, and any other payments provided by this Settlement, is Two Hundred
20 Twenty-Five Thousand Dollars (\$225,000.00), as provided in Section 3.06(a).

21 i. It is understood and agreed that Defendant's maximum total liability under this
22 Settlement, excluding Defendant's share of payroll taxes, shall not exceed Two Hundred Twenty-
23 Five Thousand Dollars (\$225,000.00) as provided in Section 3.06(a). It is understood that the Gross
24 Settlement Fund of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) is non-
25 reversionary. To the extent that an Individual Settlement Payment check is (1) undeliverable, or
26 (2) uncashed 180 days after the date listed on the check, the Individual Settlement Payment check
27 shall be distributed in accordance with California Code of Civil Procedure Section 384(b)(3) & (4)
28 as follows:

1 (a) Twenty-five percent to the State Treasury for deposit in the Trial Court Improvement
2 and Modernization Fund, established in Section 77209 of the Government Code, and
3 subject to appropriation in the annual Budget Act for the Judicial Council to provide
4 grants to trial courts for new or expanded collaborative courts or grants for Sargent
5 Shriver Civil Counsel.

6 (b) Twenty-five percent to the State Treasury for deposit into the Equal Access Fund of the
7 Judicial Branch, to be distributed in accordance with Sections 6216 to 6223, inclusive,
8 of the Business and Professions Code, except that administrative costs shall not be paid
9 to the State Bar or the Judicial Council from this sum.

10 (c) Fifty percent to the non-profit organization OneJustice, a San Francisco-based nonprofit
11 pro bono legal aid organization that provides services throughout California, which
12 supports child advocacy programs, and is a nonprofit organization providing civil legal
13 services to the indigent, and which through its various mobile bus legal clinics,
14 domestic violence and other civil legal aid programs also promotes the law consistent
15 with the objectives and purposes of the underlying class action or cause of action.”.

16 j. In the event that Named Plaintiff does seek to obtain employment with Defendant or
17 any person, subsidiary, or affiliate in any capacity after the date of the execution of this Agreement,
18 it is agreed and understood that this Agreement shall constitute good cause for the refusal by such
19 entities to offer employment to Named Plaintiff. In the event that Named Plaintiff is hired by
20 Defendant or any parent, subsidiary, or affiliate, it is agreed and understood that this Agreement
21 shall constitute good cause for termination; and that Defendant or any parent, subsidiary, or
22 affiliate, shall have the absolute right to refuse Named Plaintiff employment for any reason or for
23 no reason, or to terminate him should Named Plaintiff mistakenly be hired.

24 k. It is further understood and agreed that Named Plaintiff and/or Class Counsel shall
25 not issue any press release or have any communications to the media or press concerning this
26 Action, the Parties’ Memorandum of Understanding, and/or any business practice, procedure, or
27 policy of Defendant. Class Counsel shall not include any reference to or comment upon this
28 Action or the Parties’ Memorandum of Understanding, in any mass mailing, website,
advertisement, or other public communication regarding any business practice, procedure, or policy
of Defendant. Named Plaintiff, Defendant, Defense Counsel, and Class Counsel agree to limit
public comment on this Settlement and Agreement, the Action, and the claims asserted in the
Action, to stating that the matter has been resolved to the satisfaction of the Parties. Named
Plaintiff, Defendant, Defense Counsel, and Class Counsel shall not initiate public comment on this

Settlement and Agreement, the Action and the claims asserted in the Action.

1. The Settlement embodied in this Agreement contemplates the (a) entry of an order approving certification of a Class for settlement purposes only, (b) entry of a Final Order Approving Settlement of Class Action, (c) entry of Disposition enforcing the terms of the Settlement and retaining jurisdiction, (d) discharge of Defendant from liability for any and all Claims relating to this Action, (e) release, as set forth below in Section 5.01 below, by all Class Members, including Named Plaintiff of all claims based on or arising from the alleged wrongdoing set forth in this Action, and (f) a general release by Named Plaintiff of all known and unknown claims against Defendant, its past, present, and future parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, investors, successors and assigns, owners, officials, branches, partners, units, assigns, principals, heirs, representatives, accountants, auditors, consultants, reinsurers, predecessors in interest, beneficiaries, subrogees, executors, members, privies, administrators, fiduciaries, and trustees, and any individual or entity which could be jointly liable with Defendant pursuant to California Civil Code section 1542.

ARTICLE III.

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification of a settlement Class by the Court. If the Date of Finality does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

The Parties and their respective counsel shall take all reasonable steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. If the Court does not grant the motion for Preliminary Approval and/or the motion for Final

1 Approval, the Parties agree to meet and confer to address the Court's concerns, including the use of
2 an agreed-upon mediator to resolve the dispute if desired.

3 The procedure for obtaining Court approval of and implementing this Agreement shall be as
4 follows:

5 **Section 3.01 Motion for Conditional Class Certification and Preliminary Approval**

6 Promptly upon execution of this Agreement, the Parties shall submit this Agreement to the
7 Court and request preliminary approval and determination by the Court as to its fairness, adequacy,
8 and reasonableness. Class Counsel will prepare and file the motion for preliminary approval of
9 settlement. Upon receipt of the motion for preliminary approval and all supporting documents,
10 Defendant shall have a minimum of three (3) business days to review the motion for preliminary
11 approval of settlement before Class Counsel files the motion for preliminary approval with
12 the Court.

13 Pursuant to Labor Code section 2699(1)(2), Plaintiff shall cause this Agreement to be filed
14 with the LWDA before or at the same time this Agreement is submitted to the Court, using the
15 appropriate website and intake forms located at: [https://www.dir.ca.gov/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
16 [Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html). Plaintiff shall provide counsel for Defendant with notice
17 of such submission.

18 In seeking preliminary approval of this Agreement, the Parties shall apply to the Court for
19 the entry of a preliminary order seeking certification this Action under section 382 of the California
20 Code of Civil Procedure and Rules 3.760 *et seq.* of the California Rules of Court as a class action
21 for purposes of settlement only with respect to the Class; approving the proposed Notice as to form
22 and content; directing the mailing of the notice to the Class Members; preliminarily approving the
23 settlement subject only to the objections of Class Members and final review by the Court;
24 preliminarily approving Class Counsel's request for attorneys' fees and costs subject to final
25 review by the Court; preliminarily approving estimated costs of administration payable to the
26 Settlement Administrator; and preliminarily approving Named Plaintiff's Enhancement Award.

27 **Section 3.02 The Settlement Administrator**

28 The Parties have chosen Phoenix Settlement Administrators to administer this Settlement

1 and to act as the Settlement Administrator, including, but not limited to, distributing any notices
2 that must be provided to the Class, performing address updates and verifications as necessary prior
3 to the first mailing, performing a single address follow-up on any returned mail, responding to
4 inquiries about the Notice of Proposed Class Action Settlement, determining the validity of all Opt-
5 Out Requests, calculating the Net Settlement Amount and the Individual Settlement Payments,
6 calculating employer payroll taxes, preparing tax statements and/or reports and remitting the
7 necessary tax payments, providing necessary progress reports, preparing declarations required by
8 the Court, preparing a detailed declaration for Defendant that sets forth each of Class Members
9 who did not submit valid Opt-Out Requests, and, with notice and consent of the Parties, generating
10 and issuing the Individual Settlement Payment checks and distributing them to Verified Settlement
11 Class Members, and issuing the checks to Class Counsel for attorneys' fees and costs, the
12 Enhancement Award check to the Named Plaintiff, the PAGA payment to the LWDA, and any
13 other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the
14 terms of this Agreement.

15 The Settlement Administrator shall expressly agree to all of the terms and conditions of this
16 Agreement relating to the administration of the Settlement. The Parties each represent that they do
17 not have any financial interest in the Settlement Administrator or otherwise have a relationship
18 with the Settlement Administrator that could create a conflict of interest.

19 The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly
20 report that certifies: (i) the number of Class Members to whom the Settlement Administrator has
21 mailed the Notice Packet; (ii) the number of Notice Packets that were returned as undeliverable;
22 (iii) the number of Class Members who have submitted valid Opt Out Requests; (iv) the number of
23 Class Members who have submitted challenges or objections to any information contained in the
24 Notice Packet; and (v) the number of Settlement Class Members who have submitted objections to
25 the Settlement. Additionally, the Settlement Administrator will provide to Defense Counsel and
26 Class Counsel any updated reports regarding the administration of the Settlement Agreement.

27 The Settlement Administrator shall maintain throughout the administration of the
28 Settlement all of the Opt-Out Requests that it receives. At the conclusion of the administration of

1 the Settlement, the Settlement Administrator shall retain all Opt-Out Requests for an additional
2 four years. The Settlement Administrator shall provide to Defense Counsel all Opt-Out Requests.

3 All costs of administering the Settlement, including, but not limited to, all costs and fees
4 associated with preparing, issuing, and mailing any and all notices to Class Members and/or
5 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
6 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any
7 tax returns and any other filings required by any governmental taxing authority or agency, all costs
8 and fees associated with preparing any other checks, notices, reports, or filings to be prepared in
9 the course of administering disbursements from the Net Settlement Amount, and any other costs
10 and fees incurred and/or charged by the Settlement Administrator in connection with the carrying
11 out of its duties under this Agreement, shall be paid to the Settlement Administrator from the Gross
12 Settlement Fund. Class Counsel shall not receive any fees or disbursements from the Gross
13 Settlement Fund relating to the administration of disbursements from the Gross Settlement Fund.
14 The Parties anticipate that the Settlement Administrator's costs may be less than Twelve Thousand
15 Dollars (\$12,000.00), but in no event shall the Settlement Administrator's costs exceed Twelve
16 Thousand Dollars (\$12,000.00).

17 The Settlement Administrator shall be required to acknowledge that in its role as Settlement
18 Administrator it owes fiduciary obligations to the Named Plaintiff and Class Members and will be
19 required to attest that it will make payments consistent only with the terms of this Agreement,
20 including the allocation instructions set forth in this Agreement, or as ordered by the Court. In no
21 event shall the Settlement Administrator permit the disbursement of any portion of the Gross
22 Settlement Fund before the Date of Finality. The obligations of the Settlement Administrator are
23 released upon all funds being disbursed by the Settlement Administrator pursuant to this
24 Agreement and/or order(s) of the Court.

25 **Section 3.03 Notice to the Settlement Class**

26 Notice of the Settlement shall be provided to the Class Members, and the Class Members
27 may submit objections to the Settlement and/or requests for exclusion from the Class by using the
28 following procedures:

1 Within twenty-one (21) days after the Court preliminarily approves the Settlement, Defense
2 Counsel will provide the Class List to the Settlement Administrator.

3 Within twenty-eight (28) days after the Preliminary Approval Date, the Settlement
4 Administrator shall update the addresses using the United States Postal Service's NCOALink
5 system and mail the Notice Packet by first-class United States mail to each Class Member.

6 No later than twenty-one (21) days prior to the Final Approval Hearing, the Settlement
7 Administrator shall provide Class Counsel and Defense Counsel with a declaration attesting to
8 completion of the notice process, including any attempts to obtain valid mailing addresses for Class
9 Members and re-sending any returned Notice Packets, as well as the number of Opt Out Requests
10 that the Settlement Administrator received and the dates that the Settlement Administrator received
11 those Opt Out Requests.

12 Compliance with the procedures described in this Section shall constitute due and sufficient
13 notice to Class Members of this proposed Settlement and the Final Approval Hearing, and shall
14 satisfy the requirements of due process. Nothing else shall be required of, or done by, the Parties,
15 Class Counsel, Defense Counsel, or the Settlement Administrator to provide notice of the proposed
16 Settlement and the Final Approval Hearing.

17 **Section 3.04 Responses to Notice**

18 **a. Disputes Over Individual Payments.**

19 Class Members who do not submit a valid, timely Opt-Out Request will receive a payment
20 under this Agreement. A Class Member's individual payment is based on a *pro rata* share of the
21 Total Work Weeks.

22 Any Participating Class Member who disagrees with the number of Work Weeks attributed
23 to him or her and used to calculate his or her Settlement Share, as reflected on the Claim Notice,
24 shall be allowed to dispute the Work Weeks allocation and explain such disagreement in writing
25 ("Dispute"). Such written Dispute must be mailed to the Settlement Administrator, postmarked no
26 later than the Dispute/Exclusion/Objection Deadline Date. The Settlement Administrator shall
27 resolve the disagreement with the Participating Class Member using the employee records provided
28 by Defendant and the Class Member. In the event of a dispute or discrepancy between a

1 Participating Class Member's records and the information reflected in Defendant's records, the
2 records of Defendant will control. The date of the postmark on the return envelope shall be the
3 exclusive means used to determine whether a Class Member has "timely" disputed the calculation
4 or application of the formula for determining Settlement Awards. The Settlement Administrator's
5 decisions as to dates of employment and claim amounts will be final.

6 **b. Request for Exclusion from Class**

7 By entering into this Agreement, Named Plaintiff agrees that he is not requesting and will
8 not be requesting exclusion from the Class.

9 The Notice shall provide that Class Members who wish to exclude themselves from the
10 Class must submit a written Opt-Out Request to the Settlement Administrator requesting exclusion
11 from the Class on or before forty-five (45) days from the date the Notice is first mailed (the
12 "Dispute/Exclusion/Objection Deadline Date"). Such Opt-Out Request must contain the name,
13 address, telephone number, and last four digits of the Social Security number of the person
14 requesting exclusion, must be signed by the Class Member requesting exclusion; must be returned
15 by mail to the Settlement Administrator at a specified address; and must be postmarked on or
16 before the Dispute/ Exclusion/Objection Deadline Date, and must contain any other language as set
17 forth in the Notice. The date of the postmark on the return mailing envelope shall be the exclusive
18 means used to determine whether an Opt-Out Request has been timely submitted. Any Class
19 Member who opts out of the Class will not be entitled to any recovery under the Settlement and
20 will not be bound by the Settlement or have any right to object, appeal, or comment on the
21 Settlement. Class Members who fail to submit a valid and timely Opt-Out Request on or before the
22 Dispute/Exclusion/Objection Deadline Date shall be bound by all terms of the Settlement and any
23 Final Judgment entered in this Class Action if the Settlement is approved by the Court, including a
24 full and final release of all claims set forth in the Action, regardless of whether they have requested
25 exclusion from the Settlement. No later than five (5) days after the Objection/Exclusion Deadline,
26 the Settlement Administrator shall provide Defendant' Counsel with a complete list of all Class
27 Members who have timely and properly requested exclusion from the Class.

1 **c. Objections to Settlement**

2 By entering into this Agreement, Named Plaintiff agrees that he is not objecting to and will
3 not object to the Settlement or this Agreement. The Notice shall provide that Class Members who
4 wish to object to the Settlement must submit a written statement to the Settlement Administrator
5 objecting to the Settlement, and must do so no later than the Dispute/Exclusion/Objection Deadline
6 Date. All objections must be in writing, must include the Class Member's name, address,
7 telephone number, and last four digits of his or her Social Security number, and must state the basis
8 on which the objections are asserted. The Parties will be permitted to respond in writing to such
9 objections within the time period set by the Court. Unless the Court orders otherwise, Class
10 Members who fail to file and serve timely written objections in the manner specified above shall be
11 deemed to have waived any objections and shall be foreclosed from making any objection (whether
12 by appeal or otherwise) to the Settlement.

13 **d. No Solicitation of Settlement Objections or Exclusions**

14 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
15 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
16 to submit written objections to the Settlement or Opt-Out Requests, or appeal from the Court's
17 Final Judgment. Further, at no time shall any of the Parties or their counsel discourage any Class
18 Members from participating in the Settlement.

19 **e. Failure to Object**

20 Any Class Member who fails to timely submit a written statement of his or her intention to
21 object to the Settlement and Agreement shall be foreclosed from making any objection to this
22 Settlement and Agreement, unless otherwise ordered by the Court.

23 **f. Right of Defendant to Void Agreement**

24 Notwithstanding any other provision of this Memorandum, Defendant shall retain the right,
25 in the exercise of its sole discretion, to nullify the settlement within thirty (30) days after expiration
26 of the Opt-Out period if more than ten percent (10%) of the class opt out of this settlement. If
27 Defendant exercises this right to void the Agreement, then the Parties will have no further
28 obligations under the Agreement, including, without limitation, any obligation by Defendant to pay

1 the Gross Settlement Fund, or any amounts that otherwise would have been owed under this
2 Agreement.

3 **g. Pro Rata Enhancements**

4 1) Defendant represents that there are 499 class members as of the date of the
5 August 28, 2017 Memorandum of Understanding, executed by the Parties.

6 2) Plaintiff and his counsel agree to use their best efforts to file a motion for
7 preliminary approval of this class actions settlement promptly after this agreement is fully
8 executed, and, provided that Plaintiff and his counsel file a motion for preliminary approval
9 within 21 days after the execution of this agreement by Defendant, Defendant agrees that, if
10 the date this settlement is preliminarily approved by the Court occurs after February 15,
11 2018, there will be a corresponding increase in the Gross Settlement Fund on a pro-rata
12 basis corresponding to the ratio of [new class members who became members of the class
13 after February 15, 2018 and before the Preliminary Approval Date] / [499 class members as
14 of the date of the August 28, 2017 Memorandum of Understanding].

15 **Section 3.05 Final Approval Hearing**

16 A Final Approval Hearing shall be held before the Court on the date set forth in the Order
17 for Preliminary Approval and Notice of Proposed Class Action Settlement, which shall be
18 approximately ninety (90) days after the initial mailing of the Notice of Proposed Class Action
19 Settlement. At the Final Approval Hearing, the Court shall (1) review this Agreement and
20 determine whether the Court should give it final approval, and (2) consider any timely objections
21 made pursuant to Section 3.04(c) above and all responses by the Parties to such objections. At the
22 Final Approval Hearing, the Parties shall ask the Court to give final approval to this Settlement and
23 Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class
24 Action, which the Parties shall jointly agree upon in advance and which shall be entered in
25 the Action.

26 Pursuant to Labor Code section 2699(l)(3), Plaintiff shall cause a copy of the superior
27 court's judgment to be filed with the LWDA within 10 days after entry of the final judgment or
28 order that either provides for or denies an award of PAGA civil penalties, using any appropriate

1 website or intake forms. Plaintiff shall provide counsel for Defendant with notice of
2 such submission.

3 After entry of the Final Judgment, the Court shall have continuing jurisdiction with respect
4 to the interpretation, implementation, and enforcement of the terms of this Agreement and all
5 orders and judgments entered in connection with this Agreement, and the Parties and their counsel
6 submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the
7 settlement embodied in this Agreement, and all orders and judgments entered in connection with
8 this Agreement.

9 **a. Waiver of Right to Appeal**

10 Provided that the Final Order is consistent with the terms and conditions of this Agreement,
11 Named Plaintiff, as well as any Class Members who did not timely submit an objection to the
12 Settlement and appear at the Final Approval Hearing, hereby waive any and all rights to appeal
13 from the Final Order, including all rights to any post-judgment proceeding and appellate
14 proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any
15 extraordinary writ, and the Final Order therefore will become final and non-appealable at the time
16 it is entered. This waiver does not include any waiver of the right to oppose any appeal, appellate
17 proceedings, or post-judgment proceedings.

18 **b. Vacating, Reversal, or Material Modification on Appeal or Review**

19 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
20 or application, the reviewing court vacates, reverses, or modifies the Final Order such that there is a
21 material modification to the Settlement and Agreement, and that court's decision is not completely
22 reversed and the Final Order is not fully affirmed on review by a higher court, then Named Plaintiff
23 and Defendant will each have the right to void the Settlement and Agreement, which the Parties
24 must do by giving written notice to the other Parties, the reviewing court, and the Court not later
25 than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially
26 modifying the Final Order becomes final. A vacation, reversal, or modification of the Court's
27 award of an Enhancement or Class Counsel's fees or costs will not constitute a vacation, reversal,
28 or material modification of the Final Order within the meaning of this paragraph, provided that

1 Defendant' obligation to make payments remains limited as set forth in this Agreement.

2 **c. Administration of the Settlement with Appeal Pending**

3 In the event an appeal is filed from the Court's Final Judgment, or any other appellate
4 review is sought prior to the Date of Finality, administration of the Settlement shall be stayed
5 pending final resolution of the appeal or other appellate review. If the Final Order is reversed, then
6 the Parties and any funds to be awarded under this Settlement shall be returned to their respective
7 statuses as of the date and time immediately prior to the execution of this Agreement, and the
8 Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

9 **Section 3.06 Settlement Payment Procedures**

10 **a. Settlement Sum**

11 The Gross Settlement Fund of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00)
12 includes the following: (a) the Individual Settlement Payments to the Participating Class Members;
13 (b) the fees award to Class Counsel in an amount not to exceed Seventy Eight Thousand Seven
14 Hundred Fifty Dollars (\$78,750.00); (c) reimbursement of actual documented costs incurred by
15 Class Counsel in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00); (d) the
16 Enhancement Award to Named Plaintiff, in a total amount not to exceed Four Thousand Five
17 Hundred Dollars (\$4,500.00); (e) Settlement Administration expenses, not to exceed Twelve
18 Thousand Dollars (\$12,000.00); and (f) payment to the LWDA in the amount of Seven Hundred
19 Fifty Dollars (\$750.00) as the class's 25% share of the settlement of the PAGA penalties. The
20 Gross Settlement Fund has a maximum value of Two Hundred Twenty-Five Thousand Dollars
21 (\$225,000.00). Under no circumstances will Defendant be required to pay more than Two Hundred
22 Twenty-Five Thousand Dollars (\$225,000.00) pursuant to the terms set forth in this Agreement,
23 except as provided in Section 3.04(g) above, and that Defendant will be responsible for employer-
24 side payroll taxes as calculated by the Settlement Administrator. Defendant shall be required to
25 fund the Gross Settlement Amount within sixty-five (65) days of the Date of Finality, but no earlier
26 than January 1, 2018.

27 **b. Payment of Attorneys' Fees and Costs**

28 Class Counsel may request, and Defendant will not oppose, an award of attorney's fees and

1 reimbursement of incurred litigation costs ("Fees and Costs Award") of up to Seventy-Eight
2 Thousand Seven Hundred Fifty Dollars (\$78,750.00) in fees and up to Fifteen Thousand Dollars
3 (\$15,000.00) in documented litigation costs per Class Counsel's billing records. The Fees and
4 Costs Award will cover all work performed and all fees and costs incurred to date and all work to
5 be performed and all fees and costs to be incurred in connection with the approval by the Court of
6 this Settlement, the administration of the Settlement, and obtaining final approval of this Settlement
7 and entry of judgment. Plaintiff's Counsel shall not be permitted to petition the Court for, or
8 accept, any additional payments for attorneys' fees or costs. Plaintiff's Counsel will be issued an
9 IRS Form 1099 by the Settlement Administrator for the Fees and Costs Award. If the Court awards
10 attorneys' fees and costs in an amount less than specified above, the residual shall be distributed to
11 the Participating Class Members on a pro rata basis, using the formula laid out in Section 3.06(e).
12 The Settlement shall not be contingent upon the Court awarding Class Counsel any particular
13 amount for attorneys' fees and costs. Class Counsel and Named Plaintiff shall have no right or
14 ability to nullify the Settlement in the event that the Court awards an amount less than the Fees and
15 Costs Award described in this Agreement. The Fees and Costs Award shall be paid by the
16 Settlement Administrator to Class Counsel no later than twenty-one (21) calendar days after the
17 Defendant funds the Gross Settlement as required in Section 3.06(a) above.

18 The Settlement Administrator's payment of the Fees and Costs Award to Class Counsel
19 shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law
20 firm for attorneys' fees or costs in the Action incurred by any attorney on behalf of the Named
21 Plaintiff, and Class Members, and shall relieve Defendant, the Settlement Administrator, and
22 Defense Counsel of any other claims or liability to any other attorney or law firm for any attorneys'
23 fees or costs to which any of them may claim to be entitled on behalf of the Named Plaintiff and
24 Class Members.

25 **c. Payment of Enhancement Award to Named Plaintiff**

26 Plaintiff's Counsel may request, and Defendant will not oppose, an Enhancement Award to
27 the Named Plaintiff in an amount not to exceed Four Thousand Five Hundred Dollars (\$4,500.00)
28 to be paid to the Named Plaintiff for his time and effort spent pursuing the Action. Defendant

1 agrees not to oppose such an application, so long as it is consistent with the provisions of this
2 Agreement. The Settlement Administrator shall deliver any Enhancement Award to Named
3 Plaintiff no later than twenty-one (21) calendar days after the Defendant funds the Gross Settlement
4 as required in Section 3.06(a) above.

5 The Named Plaintiff will also be entitled to receive an Individual Settlement Payment
6 pursuant to this Agreement in addition to this Enhancement Award. If the Court awards an
7 Enhancement Award in an amount less than specified above, the residual shall be distributed to the
8 Participating Class Members on a pro rata basis using the formula laid out in Section 3.06(e). The
9 Settlement shall not be contingent upon the Court awarding Named Plaintiff any particular amount
10 for the enhancement award or service award. Class Counsel and Named Plaintiff shall have no
11 right or ability to nullify the Settlement in the event that the Court awards an amount less than the
12 Enhancement Award described in this Agreement.

13 Because it is the intent of the Parties that the Enhancement Award represents payment to
14 the Named Plaintiff for his services to the Class Members, and not wages, the Settlement
15 Administrator will not withhold any taxes from the Enhancement Award. The Enhancement
16 Award will be reported on a Form 1099 to Named Plaintiff. Although it is the contemplation of the
17 Parties that the Enhancement Award does not represent wages, the Internal Revenue Service, the
18 California Franchise Tax Board, or some other taxing authority may take the position that some or
19 all of the Enhancement Awards constitute compensation for income tax and withholding purposes.
20 Named Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service,
21 the California Franchise Tax Board, and any other relevant taxing authority the amounts required
22 by law, if any, to be withheld by Defendant from the Enhancement Awards paid under this
23 Agreement. In addition, Named Plaintiff shall hold Defendant harmless and indemnify Defendant
24 for all taxes, interest, penalties, and costs, excluding attorneys' fees, incurred by Defendant by
25 reason of any claims relating to the non-withholding of taxes from the Enhancement Award. Class
26 Counsel will issue a Form 1099 to the Named Plaintiff with regard to the Enhancement Award
27 payment. Class Counsel will provide a copy of these Form 1099s issued to counsel for Defendant.

28 **d. Payment of Settlement Administration Costs**

1 The Settlement Administration Costs shall be paid out of the Gross Settlement Fund and
2 shall not constitute payment to any Participating Class Member(s). The amount of the Settlement
3 Administration Costs shall be disclosed to the Court, Class Counsel, and Defense Counsel prior to
4 the Final Approval Hearing. The Settlement Administrator Settlement Administration Costs shall
5 be paid out of the Gross Settlement Fund no later than twenty-one (21) calendar days after the
6 Defendant funds the Gross Settlement as required in Section 3.06(a) above.

7 The Parties agree that the Settlement Administrator Costs shall not exceed Twelve
8 Thousand Dollars (\$12,000.00). If the Settlement Administrator's costs do not amount to the
9 Twelve Thousand Dollars (\$12,000.00) maximum amount allocated to those costs, any residual
10 amount shall be distributed to the Participating Class Members using the formula laid out in
11 Section 3.06(e).

12 **e. Payment of Individual Settlement Payments to Verified Settlement Class**
13 **Members**

14 The Parties agree that the Net Settlement Amount shall be used to fund Individual
15 Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between
16 all Verified Settlement Class Members based on the number of Workweeks for which they were
17 employed by Defendant, per the definition of the Class, as defined in Article I, paragraphs b. and f.,
18 above.

19 The maximum amount that each Verified Settlement Class Member is entitled to receive is
20 determined by multiplying Net Settlement Amount by a ratio that is determined by dividing a
21 Verified Settlement Class Member's total Workweeks worked during the Class Period in California
22 by the total number of Workweeks worked during the Class Period by all Class Members as
23 expressed in the following formula:

$$\begin{array}{rcccl} \text{Individual} & & \text{Net} & & \text{Verified Settlement Class Member's} \\ \text{Settlement} & = & \text{Settlement} & \times & \text{Total Number of Workweeks} \\ \text{Payment} & & \text{Amount} & & \text{Total Number of Workweeks of} \\ & & & & \text{Settlement Class} \end{array}$$

27 If a Verified Class Member worked any day during a Workweek, it will be counted as a
28 Workweek for purposes of calculating the Individual Settlement Payment.

1 It is the intent of the Parties that the Net Settlement Amount shall be sufficient to pay all
2 valid claims of Verified Class Members in accordance with the formula set forth above.
3 Accordingly, if for any reason the total value of all claims made by Verified Class Members
4 exceeds the Net Settlement Amount, then the Individual Settlement Payments will be adjusted on a
5 pro-rata basis so that the total payout to Verified Class Members does not exceed the Net
6 Settlement Amount. Furthermore, should any Class Members submit timely and valid opt out
7 request, that money shall be redistributed to the Verified Class Members on a pro rata basis
8 according to the formula in this Paragraph.

9 Each Individual Settlement Award will be allocated as one-third (1/3) to wages, one-third
10 (1/3) to penalties, and one-third (1/3) to interest. The Settlement Administrator shall calculate, and
11 remit to applicable governmental agencies sufficient amounts as may be owed for Verified
12 Settlement Class Members' taxes due on the portion of the Settlement Awards allocated to wages
13 that will be reported on an IRS Form W2 basis. Any employee-side withholdings and taxes that are
14 properly withheld and remitted from the payments to Verified Settlement Class Members shall be
15 paid by the Settlement Administrator from the Net Settlement Amount.

16 The Settlement Administrator shall also report those portions of the individual Settlement
17 Awards allocated to penalties and interest on an IRS Form 1099 basis.

18 The Settlement Administrator shall also calculate, inform Defendant of the required
19 amount, collect from Defendant the additional amount, and remit to the applicable government
20 agencies such amount as may be owed by Defendant as an employer for payroll taxes on a
21 maximum wage allocation of one-third (1/3) of the Net Settlement Amount that will be reported on
22 an IRS Form W2 basis. The Settlement Administrator shall inform Defendant of the required
23 additional payroll tax amount within 30 calendar days after the Date of Finality.

24 No later than sixty-five (65) calendar days after the Date of Finality, Defendant will provide
25 the following amounts to the Settlement Administrator: the amounts approved by the Court for
26 payment of Class Counsel's attorneys' fees and costs, the Enhancement Award, and the Settlement
27 Administration Costs, all of which the Settlement Administrator shall pay out of the Gross
28 Settlement Fund; the Individual Settlement Payments to Verified Settlement Class Members, which

1 shall all be paid out of the Net Settlement Amount; and the employer-paid payroll taxes applicable
2 to the Gross Settlement Fund, which the Settlement Administrator will calculate for Defendant an
3 inform Defendant of as set forth in this section.

4 No later than twenty-one (21) calendar days after the Defendant funds the Gross Settlement
5 as required in Section 3.06(a) above, the Settlement Administrator shall prepare and mail the
6 checks for the Individual Settlement Payments, minus applicable withholdings, to Verified
7 Settlement Class Members.

8 To the extent that an Individual Settlement Payment check is (1) undeliverable, or (2)
9 uncashed 180 days after the date listed on the check, the Settlement Administrator shall send the
10 Individual Settlement Payment check residuals as set forth in Article II, section i. above, in
11 accordance with California Code of Civil Procedure Section 384(b)(3)&(4).

12 **f. Payment to the LWDA**

13 The Settlement Administrator, no later than twenty-one (21) calendar days after the
14 Defendant funds the Gross Settlement, as required in Section 3.06(a), above, shall deliver to the
15 LWDA a payment in the amount of Seven Hundred Fifty Dollars (\$750.00) as the LWDA's share
16 of the settlement of the PAGA penalties, which the Parties believe in good faith is a fair and
17 reasonable apportionment. Defendant's counsel will provide the Settlement Administrator with a
18 cover letter and mailing instructions for the mailing of the check to the LWDA. The Settlement
19 Administrator shall copy counsel for Defendant and Plaintiff on the mailing of the letter and check
20 to the LWDA.

21 **g. No Additional Contribution by Defendant**

22 Defendant's monetary obligation under this Settlement and Agreement is limited to the
23 Gross Settlement Fund. Defendant shall not be called upon or required to contribute additional
24 monies above the Gross Settlement Fund under any circumstances whatsoever, except as provided
25 in Section 3.04(g). All costs, fees, and expenses arising out of or in connection with the
26 performance of this Agreement shall be paid from the Gross Settlement Fund.

27 If, for whatever reason and however it may occur, this Agreement is canceled, rescinded,
28 terminated, voided, or nullified or the Settlement of the Action is barred by operation of law, or

1 invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall
2 cease to have any obligation to pay any portion of the Gross Settlement Fund to anyone under the
3 terms of this Agreement, and all previous disbursements from the Gross Settlement Fund will
4 immediately be paid back to Defendant by the person or entity who received such disbursement.
5 Any unpaid costs already incurred by the Settlement Administrator shall be split by the Parties.

6 **h. No Claims Resulting from Payments**

7 No person shall have any claim of any kind whatsoever against any of the Parties, Defense
8 Counsel, Class Counsel, any Class Member, or the Settlement Administrator, based on the
9 distribution of Individual Settlement Payments made in accordance with this Agreement.

10 **i. No Effect on Employee Benefit Plans**

11 The payment to any Class Member as provided for in this Agreement (including, without
12 limitation, any Individual Settlement Payment and any Enhancement Awards paid to Named
13 Plaintiff) is not and shall not be deemed to constitute an addition to, a modification of, or a change
14 in any previously credited hours of service, compensation and/or wages under any collective
15 bargaining agreement, employee benefit plan, employment policy, or stock option plan of or
16 sponsored by Defendant or any of their present or former parent corporations or affiliates or any
17 jointly trusted benefit plans. Any such payment to any Class Member shall not form the basis for
18 additional contributions to, additional benefits under, or any other additional entitlements under any
19 collective bargaining agreement, employee benefit plan, employment policy, or stock option plan
20 of or sponsored by Defendant or any of their present or former parent corporations or affiliates or
21 any jointly trusted benefit plans. Defendant and each of their present and former parent
22 corporations and affiliates retain the right to modify and/or amend the language of their employee
23 benefit plans, employment policies, and stock option plans, and to seek to have modified and/or
24 amended the language of any collective bargaining agreement, jointly trusted benefit plans, to
25 make clear that any amounts paid as a result of this Agreement are not compensation or wages, or
26 payments for "hours worked," as defined by the applicable agreement(s), plans and policies, and
27 that no additional contributions or benefits are required by reason of the Settlement and
28 this Agreement.

1 j. **Notice of the Order and Judgment Granting Final Approval**

2 Notice of the Order and Judgment granting final approval of this Settlement will be mailed
3 by the Settlement Administrator with the settlement checks in Section 3.06(e).

4 **ARTICLE IV**

5 **LIMITATIONS ON USE OF THIS SETTLEMENT**

6 **Section 4.01: No Admission**

7 Defendant vigorously disputes the allegations in the Action. This Agreement is entered into
8 solely for the purpose of compromising claims that are highly disputed by the Parties. Nothing in
9 this Agreement is intended to be or will be construed as an admission of liability or wrongdoing by
10 Defendant. Defendant and the Released Parties deny any and all claims alleged in this Action and
11 deny all wrongdoing whatsoever. The Parties have stipulated to class certification as set forth
12 herein for settlement purposes only. This Agreement is not a concession or admission, and shall
13 not be used against Defendant or any of the Released Parties as an admission or indication with
14 respect to any claim of any fault, concession, or omission by Defendant or any of the Released
15 Parties. Whether the Settlement is finally approved, the Settlement, any document, statement,
16 proceeding or conduct related to this Agreement, and/or any reports or accounts of this Agreement,
17 shall not in any event be:

18 A. construed as, offered, or admitted in evidence as, received as, or deemed to be
19 evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of
20 a presumption, concession, indication, or admission by any of the Released Parties of any liability,
21 fault, wrongdoing, omission, concession, or damage; or,

22 B. disclosed, referred to, or offered or received in evidence against any of the Released
23 Parties, in any further proceeding in the Action, or any other civil, criminal, or administrative
24 action or proceeding except for purposes of settling this Action pursuant to this Agreement.

25 **Section 4.02: Non-Evidentiary Use**

26 Whether or not the Date of Finality occurs, neither this Agreement nor any of its terms will
27 be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for
28 any purpose adverse to Defendant or any other of the Released Parties, including, but not limited

RELEASES

Section 5.01: Release of Claims as To All Class Members.

On the Date of Finality, the Named Plaintiff and all other Class Members, except Non-Participating Class Members, shall be bound by this Agreement. If a Non-Participating Class Member receives an Individual Settlement Payment check notwithstanding his or her submission of an Opt-Out Request, such person shall be deemed a Participating Class Member and shall be bound by the terms of this Agreement if such person cashes the Individual Settlement Payment check.

Upon the Court's Final Order of this Agreement, and except as to such rights or claims as may be created by this Agreement, the Participating Class Members, comprised of each member of the Class who has not submitted a valid Opt Out Request, fully releases and discharges Defendant, its past, present, and future parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, investors, successors and assigns, owners, officials, branches, partners, units, assigns, principals, heirs, representatives, accountants, auditors, consultants, reinsurers, predecessors in interest, beneficiaries, subrogees, executors, members, privies, administrators, fiduciaries, and trustees, and any individual or entity which could be jointly liable with Defendant ("Released Parties"), from any and all claims, charges, complaints, obligations, promises, agreements, suits, rights, costs, losses, liens, penalties, fines, wages, liquidated damages, restitutionary amounts, interest, punitive damages, controversies, liabilities, debts, liabilities, demands, obligations, money owed, interest, guarantees, costs, expenses (including, without limitation, back wages, penalties, liquidated damages, and attorneys' fees and costs actually incurred), attorneys' fees and costs, damages, actions or causes of action of any nature for, known or unknown, suspected or unsuspected, which were raised, or could have been raised based upon the facts alleged, in the Action during the Class Period, including without limitation, claims under California Labor Code §§ 200, 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 510, 512, , 558, 1107, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1994.2, 2698, 2699, 2800, 2802, applicable IWC Wage Order provisions during the Class Period, claims under Section 17200 of the California Business and Professions Code, Civil Code section 3287(a), and claims for failure to pay appropriate overtime

1 wages, failure to pay all wages earned each pay period (including earned and unused vacation
2 wages), failure to provide proper meal periods, failure to pay missed meal period premiums, failure
3 to provide paid rest periods and pay missed rest break premiums, failure to pay final wages upon
4 termination, failure to pay minimum wages, failure to reimburse business expenses,
5 unfair/unlawful/fraudulent business practices, failure to pay wages upon cessation of employment,
6 failure to provide accurate itemized wage statements and maintain accurate records, failure to keep
7 requisite payroll records, any claims under California Labor Code § 2699 *et seq.* (PAGA) based on
8 the facts alleged in the Action, and all other claims and allegations made in the Action, August 19,
9 2012 through the end of the Class Period (“Released Claims”). Excluded from the Released
10 Claims are unrelated claims, including but not limited to, claims that are outside the Class Period,
11 unemployment, Workers’ Compensation, disability, discrimination, and retaliation. In addition, the
12 Participating Class Members forever agrees that he or she shall neither request nor accept
13 compensation, back pay, liquidated damages, punitive damages, penalties of any nature, attorneys’
14 fees or costs, interest, or any other relief from any other suit, class, representative, or collective
15 action, administrative claim or other claim of any sort or nature whatsoever against the Released
16 Parties, for any period from August 19, 2012 through the end of the Class Period, relating to the
17 Released Claims on behalf of Class Members. The Class Members agree not to sue or otherwise
18 make a claim against any of the Released Parties that is in any way related to the Released Claims.
19 The Class Members may later discover facts in addition to or different from those they now know
20 or believe to be true with respect to the subject matter of this Release, but the Class Members upon
21 the Date of Finality, shall be deemed to have, and by operation of the Final Order shall have, fully,
22 finally, and forever settled and released any all of the claims released pursuant to this Release.

23 It is agreed that because the Class Members are so numerous, it is impossible or impractical
24 to have each Class Member execute this Agreement. The Notice of Proposed Class Action
25 Settlement will advise all Class Members of the binding nature of the releases. Excepting only the
26 Class Members who timely submit a valid Opt-Out Request, the Notice of Proposed Class Action
27 Settlement shall have the same force and effect as if this Settlement and Agreement were executed
28 by each Class Member with regard to the claims that he or she is releasing pursuant to the

1 Settlement and Agreement.

2 **Section 5.02: General Release by Named Plaintiff.**

3 Plaintiff agrees to release all claims known or unknown, accrued or unaccrued, he has or
4 may have against Defendant, including execution of a California Civil Code section 1542 release
5 and waiver.

6 In consideration of the monetary sum provided to him by Defendant, Named Plaintiff
7 hereby fully releases and forever discharges the Released Parties from any and all actions, causes
8 of action, claims, charges, complaints, liabilities, obligations, promises, agreements, controversies,
9 damages, actions, suits, rights, demands, liens, costs, losses, debts, penalties, fines, wages,
10 liquidated damages, restitutionary amounts, attorneys' fees and costs, interest, punitive damages
11 and expenses (including, without limitation, back wages, penalties, liquidated damages, and
12 attorneys' fees and costs actually incurred) or liabilities of any kind which have been or could have
13 been asserted against the Released Parties arising out of or relating to Named Plaintiff's
14 employment with Defendant, and/or any other occurrence taking place on or before the date of this
15 Agreement, known or unknown, suspected or unsuspected, including but not limited to claims
16 arising out of, based upon, or relating to Named Plaintiff's employment with the Defendant, or the
17 remuneration for such employment, and the matters referred to herein, whether or not known or
18 suspected to exist, and whether or not specifically or particularly described herein. Without
19 limiting the generality of the foregoing, Named Plaintiff expressly releases all claims or rights that
20 exist at the time of the execution of this Agreement arising out of alleged violations of any
21 contracts, express or implied (including but not limited to any contract of employment); any
22 contract or covenant of good faith or fair dealing (express or implied); any tort, including, without
23 limitation, negligence, fraud, misrepresentation under California Labor Code § 970, negligent
24 infliction of emotional distress, intentional infliction of emotional distress, and defamation; any
25 "retaliation" claims; any claims relating to any breach of public policy; any legal restrictions on
26 Defendant's right to discharge employees or refuse to hire applicants; and any federal, state, or other
27 governmental statute, regulation, order or ordinance, including, without limitation: (1) Title VII of
28 the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or

harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (4) Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (7) California Fair Employment and Housing Act, Cal. Gov't Code § 12900 *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), sexual orientation, or age, including, without limitation, retaliation for reporting discrimination or harassment); (8) California Family Rights Act, Cal. Gov't Code § 12945.1 *et seq.* (family/medical leave); (9) California Labor Code, including but not limited to California Labor Code § 2698 *et seq.* (PAGA), or any Industrial Welfare Commission Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (11) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (12) Executive Order 11141 (age discrimination); and (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits).

Section 5.03: Named Plaintiff's Release of Unknown Claims

Named Plaintiff expressly waives any right or claim of right to assert hereafter that any claim, demand, obligation, and/or cause of action, existing at the time of the execution of this Agreement, has, through ignorance, oversight, or error, been omitted from the terms of this Agreement. Named Plaintiff agrees there is a risk that each and every injury he may have suffered by reason of the Released Parties' relationship with him might not now be known, and there is further risk that said injuries, whether known or unknown at the date of this Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained by him. Nevertheless, Named Plaintiff desires to forever and fully release and discharge the Released Parties, and each of them, and understands that by the execution of this Agreement no further claims for any such injuries that existed at the time of the execution of this Agreement may ever be asserted by him. Named Plaintiff expressly waives and relinquishes all rights and benefits afforded by section 1542 of the Civil Code of the State of California and does so understanding and

1 acknowledging the significance of such specific waiver of section 1542. Specifically, Named
2 Plaintiff waives his rights under Section 1542 of the Civil Code, which states:

3
4 **A general release does not extend to claims which the creditor**
5 **does not know or suspect to exist in his or her favor at the time of**
6 **executing the release, which if known by him or her must have**
7 **materially affected his or her settlement with the debtor.**

8
9 Named Plaintiff makes this waiver with full knowledge of his rights and with the specific
10 intent to release all known and unknown claims arising on or before the date of this Agreement,
11 and therefore specifically waive the provisions of any statute in any state of the United States
12 which prevents release of unknown claims. Thus, subject to and in accordance with this
13 Agreement, even if Named Plaintiff may hereafter discover facts in addition to or different from
14 those he now knows or believes to be true, Named Plaintiff, upon the Date of Finality, shall be
15 deemed to have fully, finally, and forever settled and released any and all claims against the
16 Released Parties that were alleged or could have been alleged in the Action, as well as any other
17 claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that
18 now exist, upon any theory of law or equity, including, without limitation, conduct that is
19 negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard
20 to the subsequent discovery or existence of such different or additional facts.

21 **Section 5.04: Inapplicability of California Labor Code Section 206.5**

22 The Verified Settlement Class Members, including, without limitation, Named Plaintiff,
23 shall be deemed to have acknowledged and agreed that their claims for wages and/or penalties
24 and/or any other recovery solely in connection with this Action are disputed, and that the payments
25 to them set forth in this Agreement constitute payment of all sums allegedly due to them solely
26 from the claims alleged in the Action. The Verified Settlement Class Members, including, without
27 limitation, Named Plaintiff, shall be deemed to have acknowledged and agreed that California
28 Labor Code section 206.5 does not apply to any such payments. That section provides in pertinent
part as follows: **“No employer shall require the execution of any release of any claim or right
on account of wages due, or to become due, or made as an advance on wages to be earned,**

1 unless payment of such wages has been made.” Each Verified Settlement Class Member shall be
2 deemed to have made the foregoing Release as if by manually signing it. This section in no way
3 limits the releases set forth above in Sections 5.01 through 5.03, inclusive.

4 **Section 5.05: No Additional Attorneys’ Fees or Costs**

5 Except for the attorneys’ fees and costs set forth in this Agreement, the Parties agree to bear
6 their own attorneys’ fees and costs related to this Action and Agreement. No Class Member or
7 Class Counsel or any other attorney acting for any Class Member may recover or seek to recover
8 any amounts for fees, costs, or disbursements from the Defendant and/or the Released Parties or the
9 Gross Settlement Fund except as expressly provided herein.

10 **ARTICLE VI**

11 **MISCELLANEOUS**

12 **Section 6.01: Amendments or Modification**

13 The terms and provisions of this Agreement may be amended or modified only by an
14 express written agreement that is signed by all the Parties (or their successors-in-interest) and their
15 counsel. In the event that the Court requires that certain changes be made to this Agreement or to
16 the Class Notice as a condition of preliminary approval, then a signed stipulation by counsel for the
17 Parties shall be sufficient to Amend or Modify this Agreement or the Class Notice without
18 additional signatures from the Named Plaintiff or Defendant.

19 **Section 6.02: Representations and Warranties**

20 Class Counsel and Named Plaintiff jointly and severally represent and warrant to Defendant
21 that they are not aware of any attorneys beyond those named as Class Counsel who have claims for
22 fees or costs arising out of the Action or the Settlement contemplated hereby.

23 This Agreement is contingent upon Defendant paying a maximum of Two Hundred
24 Twenty-Five Thousand Dollars (\$225,000.00) as provided in Section 3.06(a) for a complete
25 resolution of the claims at issue in the Action, including, without limitation, attorneys’ fees and
26 costs.

27 Class Counsel and Named Plaintiff agree to return all hardcopies of any and all documents,
28 records, evidence, and other information of any kind produced or provided by Defendant in this

1 Action to Defense Counsel (or confirm that they have been destroyed upon written request for
2 such confirmation) except any documents filed with the Court in this matter within ten (10) days
3 after entry of the Final Order Approving Settlement of Action or any Final Order approving the
4 settlement in this case, however titled. Class Counsel and Named Plaintiff further agree to destroy,
5 delete and purge any and all electronic copies, records, or softcopies and reproductions of any and
6 all documents, records, evidence, and other information of any kind produced or provided by
7 Defendant in this Action except any documents filed with the Court in this matter. Class Counsel
8 also agrees to provide written confirmation of compliance with the above requirements to return
9 and/or destroy any materials produced or provided by Defendant within ten (10) days after entry of
10 the Final Order Approving Settlement of Action or any Final Order approving the settlement in this
11 case, however titled.

12 **Section 6.03: Assignment**

13 None of the rights, commitments, or obligations recognized under this Agreement may be
14 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
15 written consent of each other Party and its or their respective counsel. The representations,
16 warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the
17 Parties, the Class Members, and the Released Parties, and shall not be construed to confer any right
18 or to avail any remedy to any other person or entity.

19 **Section 6.04: Entire Agreement**

20 This Agreement, including, without limitation, the Exhibits referred to herein, which form
21 an integral part hereof, contains the entire understanding of the Parties hereto with respect to the
22 subject matter contained herein. In case of any conflict between text contained in Articles I
23 through VI of this Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.*,
24 Articles I through VI) shall be controlling. There are no restrictions, promises, representations,
25 warranties, covenants, or undertakings governing the subject matter of this Agreement other than
26 those expressly set forth or referred to herein. Upon its full execution, this Agreement supersedes
27 all prior agreements and understandings among the Parties hereto with respect to the settlement of
28 the Action, including, without limitation, correspondence between Class Counsel and Defense

1 Counsel, the Parties' Memorandum of Understanding, and drafts of prior agreements or proposals.

2 **Section 6.05: Waiver of Compliance**

3 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
4 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the
5 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
6 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
7 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
8 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9 **Section 6.06: Counterparts and Fax/PDF Signatures**

10 This Agreement, and any amendments hereto, may be executed in any number of
11 counterparts and any Party and/or their respective counsel hereto may execute any such
12 counterpart, each of which when executed and delivered shall be deemed to be an original and all
13 of which counterparts taken together shall constitute one instrument. A fax or PDF signature on
14 this Agreement shall be as valid as an original signature.

15 **Section 6.07: Meet and Confer Regarding Disputes**

16 If any dispute arises among the Parties or their respective counsel regarding the
17 implementation or interpretation of this Agreement, Class Counsel, and Defendant's counsel shall
18 meet and confer in an attempt to resolve such dispute prior to submitting it to a mediator or the
19 Court.

20 **Section 6.08: Administration Costs.**

21 The Parties agree to cooperate in the Settlement administration process and to make all
22 reasonable efforts to control and minimize the costs and expenses incurred in administration of the
23 Settlement.

24 **Section 6.09: Circular 230 Disclaimer.**

25 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
26 "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN
27 THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
28 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN

1 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
2 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY
3 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
4 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
5 TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R. PART 10, AS AMENDED); (2) THE
6 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
7 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
8 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
9 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY,
10 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED
11 TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
12 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
13 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER
14 TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
15 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
16 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
17 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
18 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
19 CONTEMPLATED BY THIS AGREEMENT.

20 **Section 6.10: Privacy of Documents and Information.**

21 The Named Plaintiff and his counsel agree that none of the documents and information
22 provided to them by Defendant shall be used for any purpose other than prosecution of this Action.

23 **Section 6.11: Exhibits and Headings.**

24 The terms of this Agreement include the terms set forth in any attached Exhibits, which are
25 incorporated by this reference as though fully set forth in this Agreement. Any Exhibits to this
26 Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or
27 sections of this Agreement are inserted for convenience of reference only and do not constitute a
28 part of this Agreement.

1 **Section 6.12: Interim Stay of Proceedings.**

2 The Parties agree to hold all proceedings in the Action, except such proceedings necessary
3 to implement and complete the Settlement and Approval of the Class Action Settlement, in
4 abeyance pending the Preliminary and Final Approval Hearings to be conducted by the Court.

5 **Section 6.13: Authorization to Enter into Settlement Agreement.**

6 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
7 whom they represent to negotiate this Agreement and to take all appropriate action required or
8 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
9 execute any other documents required to effectuate the terms of this Agreement. The Parties and
10 their counsel will cooperate with each other and use their best efforts to effect the implementation
11 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
12 any document needed to implement the Settlement, or on any supplemental provisions that may
13 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
14 the Court to resolve such disagreement. The person signing this Agreement on behalf of Defendant
15 represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant.

16 **Section 6.14: Binding on Successors and Assigns.**

17 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
18 of the Parties, as previously defined.

19 **Section 6.15: California Law Governs.**

20 All terms of this Agreement and the Exhibits shall be governed by and interpreted
21 according to the laws of the State of California and the procedures of the Court.

22 **Section 6.16: This Settlement is Fair, Adequate, and Reasonable.**

23 The Parties believe this Settlement is a fair, adequate, and reasonable settlement of this
24 Action and have arrived at this Settlement in arm's length negotiations, taking into account all
25 relevant factors, present and potential. This Settlement was reached after extensive negotiations,
26 including an arms'-length negotiation at mediation before respected mediator Steve Rottman, Esq.,
27 on or about August 28, 2017.

1 **Section 6.17: Cooperation and Drafting.**

2 Each of the parties has cooperated in the drafting and preparation of this Agreement.
3 Hence, in any construction made to this Agreement, the same shall not be construed against any of
4 the Parties.

5 **Section 6.18: Invalidity of Any Provision.**

6 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
7 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
8 as to define all provisions of this Agreement valid and enforceable. The provisions of this
9 Agreement are severable. To the extent any provision is deemed unlawful, to the extent possible,
10 such provision shall be severed and the remainder of the Agreement shall remain valid and
11 enforceable.

12 **Section 6.19: Defense.**

13 To the extent permitted by law, this Agreement may be pleaded as a full and complete
14 defense to, and may be used as the basis for an injunction against, any action, suit, or other
15 proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in
16 breach of or contrary to this Settlement.

17 **Section 6.20: Named Plaintiff's Waiver of Right to be Excluded.**

18 The Named Plaintiff agrees to sign this Agreement and, by signing this Agreement, he
19 agrees: (1) to be bound by its terms, (2) not to request to be excluded from the Class, and (3)
20 represents that he has no objection to any of the terms of this Agreement. Non-compliance by the
21 Named Plaintiff with this paragraph shall be void and of no force or effect. Any such request for
22 exclusion or objection shall therefore be void and of no force or effect.

23 **Section 6.21: Enforcement.**

24 The Parties agree this Agreement shall be enforceable by the Court, and the Court shall
25 retain exclusive and continuing jurisdiction of this Action over all Parties and Class Members to
26 interpret and enforce the terms, conditions, and obligations of the Settlement, pursuant to California
27 Code of Civil Procedure section 664.6. The Named Plaintiff, Class Members, and Defendant
28 hereby submit to the personal and exclusive jurisdiction of the Court for purposes of interpreting,

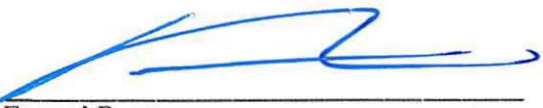
1 implementing and enforcing the Settlement embodied in this Agreement and all orders and
2 judgments entered in connection therewith. The prevailing party in any action or proceeding to
3 enforce this Agreement or otherwise concerning the terms of the settlement of the Action shall be
4 awarded his, her, or its costs and attorneys' fees.

5 IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Joint
6 Stipulation of Settlement and Release between Plaintiff and Defendant as of the date(s) set forth
7 below:

8 [SIGNATURES CONTINUED ON NEXT PAGE]

9 February 6, 2018

Rastegar Law Group, APC

10
11 By: 

12 Farzad Rastegar
13 Attorneys for Plaintiff

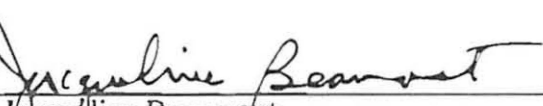
14 November __, 2017

15 By: _____

16 Versel Benjamin
17 Named Plaintiff

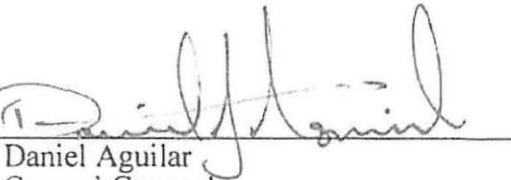
18 November , 2017

Call & Jensen LLP

19 By: 

20 Jacqueline Beaumont
21 Attorneys for Lux Bus America Co.

22 January 24, 2018
23 November __, 2017

24 By: 

25 Daniel Aguilar
26 General Counsel
27 Lux Bus America Co.
28

1 implementing and enforcing the Settlement embodied in this Agreement and all orders and
2 judgments entered in connection therewith. The prevailing party in any action or proceeding to
3 enforce this Agreement or otherwise concerning the terms of the settlement of the Action shall be
4 awarded his, her, or its costs and attorneys' fees.

5 IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Joint
6 Stipulation of Settlement and Release between Plaintiff and Defendant as of the date(s) set forth
7 below:

8 [SIGNATURES CONTINUED ON NEXT PAGE]

9 November __, 2017

Rastegar Law Group, APC

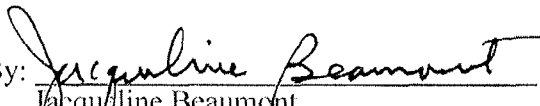
11 By: _____
12 Farzad Rastegar
13 Attorneys for Plaintiff

14 November __, 2017

15 By: _____
16 Versel Benjamin
17 Named Plaintiff

17 ~~November __, 2017~~
18 January 24, 2018

Call & Jensen LLP

19 By: 
20 Jacqueline Beaumont
21 Attorneys for Lux Bus America Co.

22 January 24, 2018
23 ~~November __, 2017~~

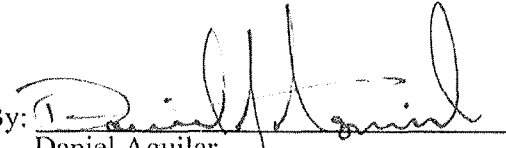
24 By: 
25 Daniel Aguilar
26 General Counsel
27 Lux Bus America Co.
28

EXHIBIT A

Versel Benjamin v. Lux Bus America Co.
Orange County Superior Court, Case No. 30-2016-00870583-CU-OE-CXC
NOTICE OF CLASS ACTION SETTLEMENT

I. WHY IT IS IMPORTANT TO READ THIS NOTICE

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY THE
LEGAL PROCEEDINGS IN THIS ACTION. YOU MAY BE ENTITLED TO MONETARY
COMPENSATION FROM THIS SETTLEMENT.**

You are being sent this Notice because records indicate that you were employed by Lux Bus America Co. ("Defendant") with the job title "driver" in Southern California, in the State of California, at any time from August 19, 2012 through [preliminary approval date or December 31, 2017], or with the job title "driver" in Northern California, in the State of California, from November 25, 2014 through [preliminary approval date or December 31, 2017] ("Class Members" or "Class Period"). This Notice relates to a proposed settlement of class action litigation ("Settlement") brought against Defendant. If you are a Class Member, this Notice contains important information about your legal rights and choices that may be affected by the claims disputed in this lawsuit, including your right to a settlement payment or to be excluded from the Settlement according to the procedures described below. The Court ordered this notice be sent to you because you have a right to know about a proposed class action settlement that can affect you. This notice explains what the lawsuit is about, how the settlement will benefit you, and how you can opt out of the settlement. You are hereby notified as follows:

Settlement has been reached between the parties in the lawsuit titled *Versel Benjamin v. Lux Bus America Co.*, Case No. 30-2016-00870583-CU-OE-CXC, pending in the California State Court for the County of Orange (the "Action"). The Settlement is on behalf of all employees employed by Defendant with the job title "driver" in Southern California, in the State of California, at any time from August 19, 2012 through [preliminary approval date or December 31, 2017], or with the job title "driver" in Northern California, in the State of California, from November 25, 2014 through [preliminary approval date or December 31, 2017] ("Class Members" or "Class Period").

The Court still has to decide whether to approve the settlement. The Court, with the Honorable Kim G. Dunning presiding, will hold a hearing at Orange County Superior Court, Department CX104, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, on [date and time], or such other, later date that the Court may authorize, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees, litigation expenses, administrative costs, and the class representative service awards. The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at this hearing.

II. WHAT THIS LITIGATION IS ABOUT
--

In this Action, Plaintiff alleges, on behalf of himself and the Class Members, that Defendant: (1) failed to provide meal periods; (2) failed to provide rest periods; (3) failed to pay overtime compensation; (4) failed to pay minimum and straight time wages; (5) failed to provide accurate statements and maintain required records; (6) failed to timely pay wages upon termination of employment; (7) engaged in unfair business practices (8) failed to permit employee to inspect and copy records; and (9) for civil penalties pursuant to the Private Attorneys General Act.

Defendant vigorously denies the allegations in the Action. Defendant contends that it has acted in compliance with the law at all times. There has been no finding of any wrongdoing or liability by Defendant.

Versel Benjamin v. Lux Bus America Co.
Orange County Superior Court, Case No. 30-2016-00870583-CU-OE-CXC
NOTICE OF CLASS ACTION SETTLEMENT

The Court has not decided who is right or wrong in this Action. Instead, the Plaintiff and Defendant have agreed to the class-wide settlement (where appropriate, Plaintiff and Defendant will be collectively referred to as the "Parties"). That way, all parties avoid the costs and risks of a trial, and all the people who qualify as Class Members can receive a payment.

Defendant has joined in the settlement only as a compromise because it wishes to finally, fully, and completely resolve the dispute in the best interests of the Class. By agreeing to the terms of the settlement, Defendant does not admit any of the allegations in the Action, or that it has done anything wrong, or that any Class Member has suffered any damage. As a result, Defendant is not giving up its right to defend itself against any of the allegations in the Action if, for any reason, the settlement is not approved. The Plaintiff and attorneys for the Class ("Class Counsel") believe that the lawsuit has merit and that the evidence supports the claims. However, Named Plaintiff and Class Counsel recognize the uncertain outcome of continued litigation, and consider it to be in the best interests of the Class Members for the Action to be settled in accordance with the terms of the settlement.

The Parties and their respective counsel recognize the inherent risk and expense of continued proceedings necessary to continue this litigation. The Parties and their counsel have also taken into account the extensive settlement negotiations that have been conducted. Based on the foregoing, the Parties believe the Settlement confers substantial benefits to all Class Members, is a fair, adequate, and reasonable settlement, and is in the best interest of all Class Members.

III. SUMMARY OF THE SETTLEMENT TERMS

The Parties have agreed to settle the Action in exchange for the amount of Two Hundred Twenty-Five Thousand (\$225,000.00) ("Gross Settlement Fund"). The Gross Settlement Fund includes: (a) the Individual Settlement Payments to the Participating Class Members; (b) the attorneys' fees award to Class Counsel in an amount not to exceed Seventy-Eight Thousand Seven Hundred Fifty Dollars (\$78,750.00); (c) reimbursement of costs incurred by Class Counsel in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00); (d) the enhancement award to Named Plaintiff, in a total amount not to exceed Four Thousand Five Hundred Dollars (\$4,500.00); (e) Settlement Administration expenses, estimated to be less than Twelve Thousand Dollars (\$12,000.00) but in no event shall these expenses exceed Twelve Thousand Dollars (\$12,000.00); and (f) payment to the California Labor and Workforce Development Agency ("LWDA") in the amount of Seven Hundred Fifty Dollars (\$750.00) as the LWDA's share of the settlement of the PAGA penalties. The balance that remains after deductions for the enhancement award to Named Plaintiff, attorneys' fees and costs to Class Counsel, and the Settlement Administrator's fees and expenses and payment to the LWDA ("Net Settlement Amount") will be paid to Class Members provided they can be located and do not opt out of the Settlement. The Individual Settlement Payments to the Participating Class Members are subject to applicable employee tax withholdings.

The Settlement Administrator will make individual settlement payments to each Class Member who can be located and who does not opt out of the Settlement ("Verified Settlement Class Member" or "Participating Class Member"). The maximum amount that each Participating Settlement Class Member is entitled to receive is determined by multiplying the Net Settlement Amount by a ratio that is determined by dividing a Participating Settlement Class Member's total workweeks worked during the Class Period in California by the total number of workweeks worked during the Class Period by all Class Members. If a Participating Class Member worked

Versel Benjamin v. Lux Bus America Co.
Orange County Superior Court, Case No. 30-2016-00870583-CU-OE-CXC
NOTICE OF CLASS ACTION SETTLEMENT

any day during a Workweek, it will be counted as a Workweek for purposes of calculating the Individual Settlement Payment.

The Allocation Form included with this Notice includes a statement of the number of workweeks you worked for Defendant during the Class Period and the estimated payment you will receive under the Settlement.

IRS Forms W-2 and 1099 will be distributed to Participating Class Members and the appropriate taxing authorities reflecting the payments that Participating Class Members receive under the Settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this Settlement, each Settlement Payment will be allocated as one-third (1/3) to wages, one-third (1/3) to penalties, and one-third (1/3) to interest. The wage portion of each individual settlement payment will be subject to applicable withholdings. Checks made payable to Participating Class Members shall remain negotiable for one hundred eighty (180) days. To the extent that a check is (1) undeliverable, or (2) uncashed 180 days after the date listed on the check, the check shall be sent to the charitable organization OneJustice.

Any Participating Class Member who disagrees with the data used to calculate his or her claim as reflected on the Notice shall be allowed to indicate and explain such disagreement. Such written dispute must be postmarked or faxed to the Settlement Administrator no later than forty-five (45) days after the date the Notice is first mailed (the "Dispute Deadline Date"). The Settlement Administrator shall resolve the disagreement with the Participating Class Member using the employee records provided by Defendant and the Participating Class Member's records. In the event of a dispute or discrepancy between a Participating Class Member's records and the information reflected in Defendant's records, the records of Defendant will control. The date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has "timely" disputed the calculation or application of the formula for determining Settlement Awards. The Settlement Administrator's decisions as to dates of employment and claim amounts will be final.

IV. YOUR OPTIONS UNDER THE SETTLEMENT
--

Option 1 – *Do Nothing*

If the Court grants final approval of the Settlement, and you have not opted out of the Settlement, you will be mailed a check for your Individual Settlement Payment, minus applicable withholdings, by the Settlement Administrator. You will be bound by the Releases and all other terms of the Settlement.

Option 2 – *Opt Out of the Settlement: If you opt out of the settlement, you will NOT receive a settlement payment.*

If you do not wish to participate in the Settlement, you may exclude yourself from participating by submitting to the Settlement Administrator a written request expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the Settlement, and desire to be excluded from the Settlement. If you do not submit a timely request for exclusion, then you will be bound by the releases set forth in the Settlement ("Releases") and all other settlement terms. The written request ("opt-out statement") must state:

Versel Benjamin v. Lux Bus America Co.
Orange County Superior Court, Case No. 30-2016-00870583-CU-OE-CXC
NOTICE OF CLASS ACTION SETTLEMENT

"I have received the Notice of Class Action Settlement of the Action titled *Versel Benjamin v. Lux Bus America Co.*, Orange County Superior Court Case No. 30-2016-00870583-CU-OE-CXC. I wish to opt out of the Settlement. I understand that by requesting to be excluded from the Settlement Class, I will not receive any payment from the Settlement approved by the Court in the Action."

The written opt-out statement also must set forth your name, address, telephone number, and last four digits of your Social Security Number. You must sign, date, and mail the opt-out statement to the Settlement Administrator by First Class U.S. Mail to the address below:

Settlement Administrator
c/o _____
P.O. Box _____

The written opt-out statement must be postmarked no later than 45 days from the mailing of the Notice Packet. If you submit an opt-out statement that is not postmarked by forty-five (45) days from mailing of Notice Packet, it will be rejected and you will be included in the Settlement Class and bound by the Releases and all other terms of the Settlement, and will receive the appropriate Individual Settlement Payment. Similarly, should you receive and cash a check for your Individual Settlement Payment and elect to opt out of the settlement, the opt out will be deemed void and you will be included in the Settlement Class and bound by the Releases and all other terms of the Settlement.

Option 3 – Mail an Objection to the Settlement Administrator and Remain a Member of the Settlement Class

If you wish to object to the Settlement, you may submit an objection with the Settlement Administrator stating why you object to the Settlement. Your objection must be in writing, must include your name, address, telephone number, and last four digits of your Social Security number, and must state with particularity the basis on which any objections are asserted. The objection must be mailed by First Class U.S. Mail to the Settlement Administrator:

Settlement Administrator
c/o _____
P.O. Box _____

All objections must be mailed to the Settlement Administrator not later than 45 days from mailing of Notice Packet. By filing an objection, you are not excluding yourself from the Settlement. To exclude yourself from the Settlement, you must follow the directions described above in Option 2. Please note that you cannot both object to the Settlement and exclude yourself.

V. THE BINDING EFFECT OF THE SETTLEMENT
--

Unless you validly and timely opt out of the Settlement, you will be deemed to have released any claims that were raised or could have been raised based upon the facts alleged in the Action. In legal terms, by not opting out and by continuing to be part of this case, you would be agreeing to have released the following:

Versel Benjamin v. Lux Bus America Co.
Orange County Superior Court, Case No. 30-2016-00870583-CU-OE-CXC
NOTICE OF CLASS ACTION SETTLEMENT

Defendant and its past, present, and future parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, investors, successors and assigns, owners, officials, branches, partners, units, assigns, principals, heirs, representatives, accountants, auditors, consultants, reinsurers, predecessors in interest, beneficiaries, subrogees, executors, members, privies, administrators, fiduciaries, and trustees and any individual or entity which could be jointly liable with Defendant (collectively, the "Released Parties") from any and all claims, charges, complaints, obligations, promises, agreements, suits, rights, costs, losses, liens, penalties, fines, wages, liquidated damages, restitutionary amounts, interest, punitive damages, controversies, liabilities, debts, liabilities, demands, obligations, money owed, interest, guarantees, costs, expenses (including, without limitation, back wages, penalties, liquidated damages, and attorneys' fees and costs actually incurred), attorneys' fees and costs, damages, actions or causes of action of any nature for, known or unknown, suspected or unsuspected, which were raised, or could have been raised based upon the facts alleged, in the Action during the Class Period, including claims under California Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 226, 227.3, 510, 2698, 2699, applicable IWC Wage Order provisions, and claims under Section 17200 of the California Business and Professions Code, Civil Code section 3287(a), failure to pay appropriate overtime wages, failure to pay all wages earned each pay period (including earned and unused vacation wages), failure to provide proper meal periods, failure to pay missed meal period premiums, failure to provide paid rest periods and pay missed rest break premiums, unfair/unlawful/fraudulent business practices, failure to pay wages upon cessation of employment, failure to provide accurate itemized wage statements and maintain accurate records, any claims under California Labor Code § 2699 *et seq.* (PAGA) based on the facts alleged in the Action, and all other claims and allegations made in the Action, August 19, 2012 through the end of the Class Period ("Released Claims").

In addition, each Participating Class Member, comprised of each member of the Class who has not submitted a valid Opt Out Request, forever agrees that he or she shall neither request nor accept compensation, back pay, liquidated damages, punitive damages, penalties of any nature, attorneys' fees or costs, interest, or any other relief from any other suit, class, representative, or collective action, administrative claim or other claim of any sort or nature whatsoever against the Released Parties, for any period from August 19, 2012 through the end of the Class Period, relating to the Released Claims on behalf of Class Members. The Class Members agree not to sue or otherwise make a claim against any of the Released Parties that is in any way related to the Released Claims. The Class Members may later discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of this Release, but the Class Members upon the Effective Date, shall be deemed to have, and by operation of the Final Order shall have, fully, finally, and forever settled and released any all of the claims released pursuant to this Release.

If the Settlement is not finally approved by the Court, or if any of its conditions are not satisfied, the conditional settlement will be voided, no money will be paid, and the Action will revert to litigation. However, if that happens, there is no assurance that: (a) any decision at trial would be in favor of any Class Members; (b) a favorable trial decision, if any, would be as favorable to any Class Members as the Settlement; or (c) any favorable trial decision would be upheld if an appeal was filed. The Court has expressed no opinion regarding the merits of the claims asserted in the Action. You will be provided notice of the Court's final approval of the Settlement on the Settlement Administrator's website at the same time you receive your settlement check.

VI. ADDITIONAL INFORMATION

Versel Benjamin v. Lux Bus America Co.
Orange County Superior Court, Case No. 30-2016-00870583-CU-OE-CXC
NOTICE OF CLASS ACTION SETTLEMENT

This Notice of Class Action Settlement is only a summary of the Action and the Settlement. For a more detailed statement of the matters involved in the Action and the Settlement, you may refer to the pleadings, the Joint Stipulation of Settlement and Release to Settle Class Action, and other papers filed in the Action, which may be inspected at the Records public window of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701 during regular business hours of each court day.

To the extent there are any conflicts between this Notice and the terms of the Joint Stipulation of Settlement and Release to Settle Class Action, the terms of the Joint Stipulation of Settlement and Release to Settle Class Action will govern.

PLEASE DO NOT CALL OR CONTACT THE COURT FOR INFORMATION ABOUT THE SETTLEMENT. If you have any questions about the Settlement, you may contact the Settlement Administrator or Class Counsel at the following addresses or numbers:

Settlement Administrator
c/o _____
P.O. Box _____

Telephone: ***-***-****

RASTEGAR LAW GROUP, APC
Farzad Rastegar, State Bar No. 155555
Kieran Hartley, State Bar No. 301974
22760 Hawthorne Blvd., Suite 200
Torrance, California 90505
Telephone: (310) 961-9600
Facsimile: (310) 961-9094

If you are a current employee, this settlement will not affect your employment. Neither this settlement nor this lawsuit affects your ongoing employment with Defendant.

Who are the attorneys representing the parties?

Attorneys for Plaintiff

RASTEGAR LAW GROUP, APC
Farzad Rastegar, State Bar No. 155555
Kieran Hartley, State Bar No. 301974
22760 Hawthorne Blvd., Suite 200
Torrance, California 90505
Telephone: (310) 961-9600
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Attorneys for Defendant

CALL & JENSEN, APC
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610 Newport Center Drive, Suite 700
Newport Beach, California 92660
Telephone: (949) 717-3000
Facsimile: (949) 717-3100

ALLOCATION FORM

Versel Benjamin v. Lux Bus America Co.

Orange County Superior Court, Case No. 30-2016-00870583-CU-OE-CXC

INSTRUCTIONS: If the information contained on this form is correct, you do NOT need to take any action at this time and will automatically be sent a Settlement payment after the Settlement is approved.

If the contact information contained in this form is incorrect, or if you believe the number of workweeks reported in Defendant's records is inaccurate, you must complete, sign, and return this form, along with any documents supporting your dispute regarding workweeks, no later than [45 DAYS FROM MAILING OF NOTICE] to the Settlement Administrator below. If you do not provide any documents supporting your dispute, the number of work weeks reported in Defendant's records will be presumed correct and your challenge will be rejected by the Settlement Administrator. If you have any questions about completing this Allocation Form, please call the Settlement Administrator at [INSERT TOLL FREE NUMBER].

Settlement Administrator

c/o _____

P.O. Box _____

1. CURRENT CLAIMANT INFORMATION CORRECTED INFORMATION (IF ANY)

<<CLASS MEMBER NAME>> _____

<<STREET ADDRESS>> _____

<<CITY, STATE, ZIP>> _____

Last 4 Digits of Social Security No.: <<>> _____

2. EMPLOYMENT INFORMATION AND ESTIMATED PAYMENT

According to Defendant's records, you were employed as a hourly, non-exempt employee of Defendant for a total of **[INSERT NO. OF WORKWEEKS]** work weeks during the time period between [April 19, 2012 OR November 25, 2014] to [Preliminary Approval Date or December 31, 2017]. Based on the above number of work weeks, the Settlement Administrator has preliminarily calculated your total share due under this Settlement to be approximately \$ _____. This figure could increase or decrease depending on whether any Class Members opt-out from the Settlement, the total amount of attorney fees and costs approved by the Court, the requested enhancement to Named Plaintiff, the total amount of settlement administration costs, the required tax withholdings, and the approved penalties to the California Labor and Workforce Development Agency.

☐

I wish to dispute the total number of work weeks during the period between [August 19, 2012 OR November 25, 2014] to [Preliminary Approval Date or December 31, 2017]. I believe that I worked _____ workweeks for Defendants during the period of [August 19, 2012 OR November 25, 2014] to [Preliminary Approval Date or December 31, 2017]. I have also included any documentary evidence that supports my claim.

Date

Print Name

Signature

EXHIBIT B

Benjamin v. Lux Bus America Co.
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, Ca. 92863

Postage Will
Be Placed
Here Prior To
Mailing

Phoenix ID: <<Phoenix>>
<<First Name>> <<Last Name>>
<<Address>>
<<City>>, <<State>> <<Zip>>