

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff MARK FLACH
2 (“Plaintiff” or “Class Representative”), on behalf of himself and all others similarly situated to him
3 and as defined below, and WHISK LOGISTICS, LLC (“Defendant”), as set forth below:

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

5 Defendant and Class Representative enter into this Joint Stipulation of Class Action and
6 PAGA Settlement and Release (“Stipulation,” “Settlement,” or “Settlement Agreement”), including
7 all associated exhibits or attachments, in compromise of disputed claims for the sole purpose of
8 resolving the matter entitled *Mark Flach v. Whisk Logistics, LLC* filed in Ventura County Superior
9 (“Action” or “Litigation”). The Settlement is subject to approval by the court. In the event that the
10 Court does not execute and file the Final Approval Order and Judgment, or in the event that the
11 associated Judgment does not become final for any reason, this Stipulation will be deemed null and
12 void, it will be of no force or effect whatsoever, it will not be referred to or used for any purpose
13 whatsoever, and the negotiation, terms and entry of it shall remain subject to the provisions of
14 California Evidence Code §§ 1119 and 1152.

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

25 **II. The Parties to this Stipulation**

26 This Stipulation (with the associated exhibits) is made and entered into by and among Plaintiff
27 (on behalf of himself and each of the members of the Class) and Defendant (Plaintiff and Defendant

1 shall be referred to collectively as “Parties”). This Stipulation is intended by the Parties to result in
2 a Judgment and to fully, finally, and forever resolve, discharge and settle the Released Claims
3 (defined below) upon and subject to the terms and conditions thereof.

4 **III. Procedural Posture**

5 On December 12, 2022, Plaintiff filed a class action complaint against Defendant pleading
6 causes of action under the California Labor Code and Unfair Competition Law for 1) failure to pay
7 the minimum wage; 2) failure to pay overtime; 3) failure to pay wages for missed meal and rest
8 periods; 4) failure to reimburse business expenses; 5) failure to provide accurate itemized wage
9 statements; 6) waiting time penalties; 7) unlawful deductions; 8) unpaid sick leave; 9) failure to
10 provide written notice upon hire; and 10) Private Attorneys General Act penalties.

11 On November 9, 2022, the Parties participated in mediation before Steve Pearl. The mediation
12 did not end with a resolution, however the parties continued to work with Mr. Pearl over the following
13 weeks and on November 17, 2022, resolved this matter through a mediator’s proposal accepted by
14 both Parties.

15 **IV. Defendant’s Denial of Wrongdoing or Liability**

16 Defendant denies all of the claims and contentions alleged by the Plaintiff in the Litigation,
17 and has asserted multiple defenses to liability, class certification, and damages. Defendant does not,
18 by this Settlement Agreement or otherwise, admit any liability of wrongdoing of any kind.
19 Nonetheless, Defendant has taken into account the uncertainty and risks inherent in any litigation,
20 particularly class action litigation, and concluded that to continue the Litigation would be protracted
21 and expensive and that it is desirable that the Litigation be fully and finally settled in the manner and
22 upon the terms and conditions set forth in this Stipulation.

23 The Parties understand and acknowledge that this Settlement Agreement constitutes a
24 compromise and settlement of disputed claims. No action taken by the Parties whether previously or
25 in connection with the negotiations or proceedings connected with the Settlement or this Agreement
26 shall be deemed or construed to be an admission of the truth or falsity of any allegations, claims, or
27 defenses heretofore made, or an acknowledgment or admission by any party of any fact, fault,

liability, or wrongdoing of any kind whatsoever.

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

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

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

V. Claims of the Class Representative and Benefits of Settlement

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

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

2

3
4

- 5
- 6
- 7

8
9

10

11
12

13

14
15
16
17
18
19
20
21

22
23
24

25
26
27

undeliverable without a forwarding address.

1.9 “Maximum Settlement Amount” is the amount of Seven Hundred Fifty-Five Thousand Dollars and Zero Cents (\$755,000.00), which is the maximum amount to be paid by Defendant pursuant to the Settlement Agreement other than Employer Taxes, which will include: Attorneys’ Fees and Costs, Settlement Administration Costs, Service Payments, PAGA Penalties, and the Net Settlement Amount.

1.10 “Individual Class Settlement Amount” means an individual Participating Class Member’s share of the Net Settlement Amount, which will be allocated as 10% wages, 50% expense reimbursements, 30% interest, and 10% penalties.

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

1.12 “Individual Class Workdays” means the number of Workdays Class Members worked for Defendant during the Class Period.

1.13 “Individual PAGA Settlement Payment” means the net payment of a PAGA Employee’s share of the \$2,500 (25% of the \$10,000 to be paid in settlement of the PAGA claims in the Litigation), which will be allocated as 100% penalties.

1.14 “Individual PAGA Workdays” means the number of Workdays worked for Defendant during the PAGA Period.

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

1.16 “Net Settlement Amount” means the Maximum Settlement Amount, less the amount that will be available for payment to all Participating Class Members (subject to the occurrence of the Effective Date), and is calculated by subtracting all of the following from the Maximum Settlement Amount: (1) attorneys’ fees in the amount of up to \$251,666.67 and reimbursement of litigation costs and expenses not to exceed \$30,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2) service award to Plaintiff of \$15,000; (3) fees and expenses of administration of the Settlement to the

1 Settlement Administrator in an amount not to exceed \$10,000 (“Settlement Administration Costs”);
2 and (4) the \$10,000 in PAGA Penalties. The Net Settlement Amount is currently estimated to be
3 approximately \$438,333.33, and this figure may change depending on the actual amounts awarded
4 by the Court for the Settlement Administration Costs, Attorneys’ Fees and Costs, and Service
5 Payment, and approved by the Court for PAGA Penalties.

6 1.17 “Notice of Class Action Settlement” or “Class Notice(s)” means a notice titled “Notice
7 of Class Action Settlement” to be approved by the Court, substantially in the form attached hereto as
8 “**Exhibit 1.**” The Notice of Class Action Settlement will constitute the class notice pursuant to
9 California Rule of Court, Rule 3.769(f).

10 1.18 “Opt Out” means a Class Member’s act of excluding him or herself from the
11 Settlement, by way of submitting a timely and valid Request for Exclusion to the Settlement
12 Administrator, in conformity with the requirements set forth herein and in the Class Notice. PAGA
13 Employees will release their Released PAGA Claims and receive an Individual PAGA Settlement
14 Payment regardless of whether they request exclusion from the Settlement.

15 1.19 “Final Approval Order and Judgment” means the judgment and order to be entered
16 by the Court, substantially in the form that the parties mutually agree to and lodge with the Court,
17 which will be a judgment for purposes of California Rule of Court, Rule 3.771(a) (“Judgment”) and
18 constitute approval pursuant to California Rule of Court, Rule 3.769(a). The Final Approval Order
19 and Judgment will be posted on the Settlement Administrator’s website for a period of sixty (60)
20 calendar days in compliance with California Rule of Court, Rule 3.771(b).

21 1.20 “PAGA Employees” means all Class Members who worked for Defendant at any time
22 from May 10, 2021 through July 2, 2022.

23 1.21 “PAGA Penalties” means the penalties pursuant to California Labor Code §§ 2698, *et*
24 *seq.*, the Private Attorneys General Act of 2004 (“PAGA”) in the amount of \$10,000.00 to be paid in
25 settlement of the PAGA claims in the Litigation. PAGA Penalties are to be approved by the Court
26 pursuant to California Labor Code § 2699 and are to be distributed as follows: seventy-five percent
27 (75%) to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) that will be distributed

1 to PAGA Employees.

2 1.22 “PAGA Period” means the time period from May 10, 2021 through July 2, 2022.

3 1.23 “PAGA Workdays” means the number of Workdays Class Members worked for
4 Defendant during the PAGA Period.

5 1.24 “Participating Class Members” or “Settlement Class” means all Class Members who
6 do not Opt Out pursuant to Paragraph 3.3.4 and, thus, become bound by the Judgment.

7 1.25 “Person” means a natural person, corporation, company, partnership, firm,
8 association, or society.

9 1.26 “Preliminary Approval Date” means the date on which the Court grants preliminary
10 approval of the Settlement.

11 1.27 “Preliminary Approval Order” means an order to be executed and filed by the Court,
12 substantially in the form that the parties mutually agree to and lodge with the Court, which will
13 constitute an order certifying a provisional class for settlement purposes only pursuant to California
14 Rule of Court, Rule 3.769(d) and an order setting a Final Approval Hearing pursuant to California
15 Rule of Court, Rule 3.769(e).

16 1.28 “Reasonable Address Verification” means the utilization of the National Change of
17 Address Database maintained by the United States Postal Service to review the accuracy of and, if
18 possible, update a mailing address.

19 1.29 “Released Class Claims” means all claims, demands, rights, liabilities and causes of
20 action of every nature and description whatsoever including without limitation statutory,
21 constitutional, contractual or common law claims, against the Released Parties (as defined below),
22 and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class
23 Members’ employment by Defendant in California, that arise under any state or local law or state
24 administrative order that was or could have been pled based on the facts alleged in the Litigation,
25 including claims of misclassification and willful misclassification, failure to pay minimum wages,
26 failure to pay overtime wages, failure to provide compliant meal periods and/or associated premiums,
27 failure to provide wage statements, failure to provide compliant rest periods and/or associated

premiums, failure to pay wages timely at termination, failure to reimburse for business expenses, unlawful wage deductions, failure to provide paid sick leave and to maintain records documenting hours worked and paid sick days accrued, failure to provide written notice upon hire under Labor Code 2810.5, unfair competition, and violations of California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 221, 223, 225.5, 226, 226(a), 226.3, 226.7, 226.8, 246, 247.5, 353, 510, 512(a), 558, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2810.5, the applicable Wage Order of the Industrial Wage Commission, and California Business & Professions Code §§ 17200 to 17208, including without limitation all related claims for restitution and other equitable relief arising from California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys' fees or litigation costs, and any other related claims and/or penalties. The release does not extend to any claims not alleged in the Litigation and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including but not limited to those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment. This release does not include any of the claims encompassed within the Released PAGA Claims (as defined below).

1.30 “Released PAGA Claims” means all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for civil penalties pursuant to PAGA, that accrued during the PAGA Period, and as a result of PAGA employees’ employment by Defendant in California, that arise under any state or

1 local law or state administrative order that was or could have been pled based on the facts alleged in
2 the Litigation and the notice to the LWDA, including claims of misclassification and willful
3 misclassification, failure to pay minimum wages, failure to pay overtime wages, failure to provide
4 compliant meal periods and/or associated premiums, failure to provide wage statements, failure to
5 provide compliant rest periods and/or associated premiums, failure to pay wages timely at
6 termination, failure to reimburse for business expenses, unlawful wage deductions, failure to provide
7 paid sick leave and to maintain records documenting hours worked and paid sick days accrued, failure
8 to provide written notice upon hire under Labor Code 2810.5, unfair competition, and violations of
9 California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 221, 223, 225.5, 226, 226(a), 226.3,
10 226.7, 226.8, 246, 247.5, 353, 510, 512(a), 558, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
11 1199, 2800, 2802, 2810.5, and the applicable Wage Order of the Industrial Wage Commission. The
12 release does not extend to any claims not alleged in the Litigation and the notice to the LWDA.

13 1.31 “Released Parties” means Defendant Whisk Logistics, LLC, and each of its parent
14 companies, subsidiaries, affiliates, current and former management companies, shareholders,
15 members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and
16 any past, present or future officers, directors and employees) predecessors, successors, and assigns.

17 1.32 “Response Deadline” means the date that is sixty (60) calendar days after the date on
18 which the Settlement Administrator initially mails the Class Notice to the Class Members, which will
19 be the deadline for a Class Member to Opt Out, dispute the number of Workdays credited to him or
20 her, and/or object to the Settlement, and which will be indicated on the Class Notice that is mailed to
21 the Class Members.

22 1.33 “Request for Exclusion” means a written request to be excluded from the Settlement,
23 which must be made in writing submitted to the Settlement Administrator by mail, postmarked on or
24 before the Response Deadline, and which must contain the case name (*Mark Flach v. Whisk Logistics,*
25 *LLC*, Ventura County Superior Court Case No. _____), as well as the Class Member’s full
26 name, address, telephone number, last four (4) digits of his or her Social Security number, and
27 signature, and a clear statement indicating that he or she seeks to exclude him or herself from the

Settlement.

1.34 “Settlement Administrator” means the third-party settlement administration firm, ILYM Group, Inc.

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

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

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

1.38 “Workdays” means the numbers of workdays worked by the Class Members for Defendant during the Class Period.

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

2.1 Defendant will fund the total Maximum Settlement Amount, along with the Employer Taxes (which will be paid by Defendant separately and in addition to the Maximum Settlement Amount). The Maximum Settlement Amount will be paid as follows: Defendant shall deposit the required maximum payout of \$755,000 with the Settlement Administrator in one installment no later than December 31, 2022. If the Court’s approval of this settlement is overturned on appeal, all settlement funds deposited by Defendant with the Settlement Administrator to date shall be refunded to Defendant within fourteen (14) days of the Court’s order declining to approve the settlement.

2.2 The Settlement Administrator will administer the Settlement and perform any function related to settlement administration at the agreed-upon instruction of both Class Counsel and Defendant, including, and not limited to, establishing and maintaining a settlement website and toll-

1 free telephone line for Class Members to call with inquiries regarding the Settlement, distributing the
2 Class Notice, performing skip traces with respect to Class Notices that are returned as undeliverable
3 and without a forwarding address on or before the Response Deadline, receiving and processing
4 Requests for Exclusion and objections to the Settlement, adjudicating Class Members' disputes
5 regarding Workdays, providing Class Counsel and counsel for Defendant with weekly updates on the
6 status of the settlement administration process (including the names and percentages of Class
7 Members who Opt Out or object), calculating and handling inquiries regarding the calculation of the
8 Individual Settlement Amounts, preparing a declaration to submit to the Court that details the
9 settlement notice administration process and identifies each Class Member who Opts Out, and
10 distributing the Maximum Settlement Amount. The actions of the Settlement Administrator will be
11 governed by the terms of this Stipulation. The Parties, through their counsel, may provide written
12 information needed by the Settlement Administrator pursuant to the Stipulation.

13 2.3 The Parties agree to cooperate in good faith and to coordinate with each other and the
14 Settlement Administrator to carry out the terms of the Settlement, including, without limitation, by
15 providing reasonably available information regarding Class Members.

16 2.4 Defendant, through the Settlement Administrator, will distribute payments as follows:

17 (a) Class Representative Enhancement Payment: Subject to Court approval, the
18 Plaintiff Mark Flach shall receive a service award of \$15,000, which Defendant agrees not to oppose.
19 Since it is the intent of the Parties that the service award to Class Representative is for his service to
20 the Class Members, and not wages, the Claims Administrator will not withhold any taxes from the
21 service award. The Claims Administrator will report the service award on a Form 1099, which it will
22 provide to the Class Representative and to the pertinent taxing authorities. Any unapproved portion
23 of the Class Representative Enhancement Payment will become part of the Net Settlement Amount
24 and will not revert to Defendant.

25 (b) Attorneys' Fees and Litigation Costs: Class Counsel shall submit their Application
26 for Award of Attorneys' Fees and Costs to the Court before the Final Approval Hearing. Class
27 Counsel will seek attorneys' fees and costs in the amount of \$251,666.67, and actual costs up to
28

1 \$30,000.00, subject to court approval. Class Counsel shall serve Defendant with copies of all
2 documents in support of their Application for Award of Attorneys' Fees and Costs. The Claims
3 Administrator will report the attorneys' fees and costs award on a Form 1099, which it will provide
4 to Class Counsel and to the pertinent taxing authorities. Any unapproved Attorneys' Fees and
5 Litigation Costs will become part of the Net Settlement Amount and will not revert to Defendant.

6 (c) Claims Administration Costs: Subject to Court approval, the Claims Administrator
7 shall be paid an amount which is expected to not exceed \$10,000.00 for all fees and costs relating to
8 the administration of this settlement, all tax document preparation, custodial fees and accounting fees,
9 all costs and fees associated with preparing, issuing, and mailing any and all Class Notices, all costs
10 and fees associated with computing, reviewing, and paying distributions from the Maximum
11 Settlement Amount, all costs and fees associated with preparing any tax returns and any other filings
12 required by any governmental taxing authority or agency, all costs and fees associated with preparing
13 any other notices, reports, or filings to be prepared in the course of administering disbursements from
14 the Maximum Settlement Amount, and any other costs and fees incurred and/or charged by the Claims
15 Administrator in connection with the execution of its duties under this Stipulation.

16 2.5 No later than thirty (30) calendar days after Effective Date, Defendant, through the
17 Settlement Administrator, and according to the terms, conditions and procedures set forth in
18 Paragraph 2.6 of this Stipulation, shall pay to Class Counsel their court-approved Attorneys' Fees
19 and Costs and to each Participating Class Member and PAGA Employee their Individual Class
20 Settlement Amount and Individual PAGA Settlement Payment, respectively. Each of the payments
21 to Participating Class Members will be inclusive of interest and penalties, and will be allocated as
22 follows: 10% to the satisfaction of claims for unpaid wages; 50% to the satisfaction of business
23 expense claims; 30% to the satisfaction of interest; and 10% to the satisfaction of penalties. All
24 settlement payments for wages shall be subject to required withholdings and deductions as W-2 wage
25 payments. With regard to payments in settlement of claims for penalties, expenses and interest, these
26 payments shall be issued through a 1099 form and not subject to withholdings or deductions. The
27 payments to PAGA Employees are allocated as 100% penalties and shall also be issued through a

1 1099 form and not subject to withholdings or deductions.

2 2.6 The Claims Administrator shall compute the Individual Class Settlement Amount and
3 Individual PAGA Settlement Payment for the Participating Class Members as follows:

4 (a) The payment of the Individual PAGA Settlement Payments will be calculated
5 as follows: \$2,500 will be allocated to PAGA Employees as follows: each PAGA Employees' portion
6 will be determined by dividing each PAGA Employees Individual PAGA Workdays, by the total
7 amount of total PAGA Workdays, and then multiplying the result by \$2,500.

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

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

16 2.7 Defendant, through the Claims Administrator, will report each payment made on the
17 Maximum Settlement Amount to government authorities including the Internal Revenue Service as
18 required by law, and it shall make all required deductions and/or withholdings. Defendant, through
19 the Claims Administrator, shall report payments for penalties and interest to the Internal Revenue
20 Service (and other relevant governmental agencies) as non-wage income in the year of payment on
21 a Form 1099, or similar form issued to the Participating Class Members and PAGA Employees in
22 question.

23 2.8 To the extent that there are excess funds from uncashed checks for Class Members
24 and PAGA Employees who cannot be located, the parties agree that such funds shall be submitted to
25 the State Controller Unclaimed Property Fund in the name of the Class Member and/or PAGA
26 Employee for whom the funds are designated, 180 days after the checks have been mailed to the Class
27 Members and PAGA Employees.

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

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

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

3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

16
17
18
19
20
21
22
23
24
25
26
27
28

17
18
19
20
21
22
23
24
25
26
27
28

26
27
28

information, the following: the full name, Last Known Address, social security number, Individual Class Workdays, and Individual PAGA Workdays (“Class List”). By granting preliminary approval of the Settlement, the Court will be deemed to have authorized Defendant to provide the Settlement Administrator with the Class List. Defendant will provide the Class List to the Settlement Administrator and Class Counsel within fourteen (14) calendar days following the Preliminary Approval Date.

3.2.3 The Settlement Administrator will undertake a Reasonable Address Verification to ascertain the accuracy of the Last Known Address of the Class Members. To the extent this process yields an Updated Address, that Updated Address will be treated as the Last Known Address for purposes of this Stipulation and for Class Notice mailing.

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

3.2.5 Unless the Settlement Administrator receives a Class Notice returned from the United States Postal Service for reasons discussed below in this paragraph, on or before the Response Deadline, that Class Notice will be deemed to have been mailed and received by the Class Member to whom it was sent five (5) calendar days after the mailing. In the event that subsequent to the first mailing of a Class Notice and on or before the Response Deadline, the Class Notice is returned to the Settlement Administrator by the United States Postal Service without a forwarding address, the Settlement Administrator will undertake a Skip Tracing on the Class Member to attempt to ascertain the current address of the Class Member, and if such an address is ascertained, the Settlement Administrator will undertake a single re-mailing of the Class Notice to any Updated Address that is located for the Class Member, within three (3) business days of receipt of the returned Class Notice, and the Class Notice will be deemed mailed and received at that point. In the event that subsequent to the initial mailing of a Class Notice and on or before the Response Deadline, the Class Notice is returned to the Settlement Administrator by the United States Postal Service with a forwarding

1 address for the Class Member, the forwarding address will be deemed the Updated Address for the
2 Class Member, the Settlement Administrator will undertake a single re-mailing of the Class Notice
3 to the Updated Address within three (3) business days of receipt of the returned Class Notice, and the
4 Class Notice will be deemed mailed and received at that point. The Settlement Administrator will
5 include a cover letter with any re-mailing to inform the Class Member that the Class Notice was re-
6 mailed and that he or she has the later of the Response Deadline or ten (10) calendar days from the
7 date on which the Class Notice was re-mailed (which shall be the date the re-mailing of the Class
8 Notice is postmarked) to Opt Out, object to the Settlement, and/or dispute the number of Workdays
9 credited to him or her. Compliance with the procedures described in this paragraph will constitute
10 due and sufficient notice to Class Members of this Settlement and of the Final Approval Hearing, and
11 will satisfy the requirements of due process. Nothing else will be required of or done by the Parties,
12 Class Counsel, counsel for Defendant, or the Settlement Administrator to provide notice of the
13 Settlement and the Final Approval Hearing.

14 3.2.6 No later than seven (7) calendar days after the Response Deadline, the
15 Settlement Administrator will provide Class Counsel and counsel for Defendant with a declaration
16 attesting to completion of the notice process, including any attempts to obtain Updated Addresses for,
17 and the re-sending of, any returned Class Notices, to be filed with the Court by Class Counsel.

18 **3.3 Responses to the Notice of Class Action Settlement**

19 3.3.1 Disputing Workdays: If a Class Member disagrees with the number of
20 Workdays credited to him or her as set forth in his or her Class Notice, he or she must submit a written
21 dispute along with documentation that supports his or her belief that he or she should be credited with
22 a different number of Workdays. The dispute must be submitted to the Settlement Administrator by
23 mail, postmarked on or before the Response Deadline. The dispute must contain the case name and
24 number of the Action (*Mark Flach v. Whisk Logistics, LLC*, Ventura County Superior Court Case
25 No. _____), as well as the Class Member's name, address, telephone number, last four
26 (4) digits of his or her Social Security number, and signature. The dispute must also contain a clear
27 statement indicating that the Class Member disputes the number of Workdays credited to him or her.

1 The Settlement Administrator will review the Workdays dispute and supporting documentation and
2 make a determination based upon the submitted documentation as to the validity of the Class
3 Member's claim. If the Settlement Administrator needs further information from Defendant
4 concerning the Class Member's claim, the Settlement Administrator will notify Defendant and Class
5 Counsel and request the needed information. Defendant's records will be presumed determinative,
6 unless the Class Member has submitted valid and compelling documentation to support his or her
7 claim to a different number of Workdays than the number shown on the Class Notice. The Settlement
8 Administrator will resolve all disputes by applying the above standard, and the decision of the
9 Settlement Administrator on any such disputes will be final.

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

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

27 3.3.4 Opting Out of Settlement: Class Members may elect to Opt Out of the
28

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

19 3.3.5 If a Class Member submits both a Request for Exclusion and an objection to
20 the Settlement, the Request for Exclusion will be accepted, and the objection will be disregarded.

21 3.3.6 The Parties agree that the Response Deadline will not be extended, and no
22 untimely submissions will be honored, under any circumstances, unless mutually agreeable by the
23 Parties and/or except to the extent permitted under Paragraph 3.2.6.

24 **3.4 Final Approval Hearing.**

25 3.4.1 After the Response Deadline, a Final Approval Hearing will be held before the
26 Court in order to: (1) determine whether the Court should grant final approval of the Settlement; (2)
27 consider objections to the Settlement; and (3) consider the application for an award of Attorneys' Fees

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

9 **3.5 Releases**

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

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

18 3.5.3 Class Representative's General Release of Claims

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

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

1 ii. In consideration for the Service Payment and as an inducement for
2 Defendant to enter into this Stipulation, with respect to the Class Representative only, the Released
3 Claims will additionally include any and all claims including Unknown Claims against Defendant
4 that accrued during the Class Period, but does not include claims for: age discrimination under the
5 Age Discrimination In Employment Act, unemployment insurance, workers' compensation benefits,
6 state disability compensation, previously vested benefits under any Employer-sponsored benefits plan
7 or claims under the Employment Retirement Income Security Act of 1974.

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

23 **3.6 Termination of Settlement; Reasonable Steps to Cure.**

24 3.6.1 In the event that the Settlement is not be approved in its entirety by the Court,
25 or in the event that the Effective Date does not occur, Defendant will have the option to void the
26 Settlement, and in such case, no payments will be made by Defendant to anyone, other than the cost
27 of administration, in accordance with the terms of this Stipulation, and this Stipulation will be deemed
28

1 null and void with no effect on the Litigation whatsoever. Notwithstanding this provision, the Parties
2 agree to take all reasonable steps to cure any issues cited by the Court as reason for non-approval of
3 any matter(s) filed with the Court for preliminary and final approval.

4 3.6.2 The Maximum Settlement Amount was calculated with, and is premised on,
5 the understanding that there are approximately 115 Class Members and 3,469 workweeks during the
6 time period of June 23, 2018 through July 2, 2022. To the extent that either of the forgoing estimates,
7 as represented by Defendant, increases by more than 5%, Defendant will have the option to increase
8 the Maximum Settlement Amount proportionately by the amount exceeding 5%. For example, if the
9 number of workweeks increases by 7% then Defendant shall increase the Maximum Settlement
10 Amount by 2%. Likewise, if the number of class members increases by 7% then Defendant shall
11 increase the settlement pot by 2%. If Defendant declines to do so, Plaintiff will have the option to
12 terminate the settlement in its entirety and the Parties will be returned to their respective positions as
13 if no settlement had been contemplated.

14 **3.7 Miscellaneous Provisions.**

15 3.7.1 No Person will have any claim against Class Counsel, the Settlement
16 Administrator, or any of the Released Parties based on the payments made or other actions taken
17 substantially in accordance with the Settlement or further orders of the Court.

18 3.7.2 In the event that the Settlement is not substantially approved by the Court, after
19 all reasonable steps to cure have been exhausted, or the Settlement is terminated, cancelled, declared
20 void, or fails to become effective in accordance with its terms, or if the Judgment does not become
21 final, or to the extent cancellation is otherwise provided for in this Stipulation, the Parties will resume
22 the Litigation at that time as if no Stipulation had been entered. In such event, the terms and provisions
23 of the Stipulation will have no further force and effect with respect to the Parties and will not be used
24 in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by
25 the Court in accordance with the terms of the Stipulation will be treated as vacated. Notwithstanding
26 any other provision of this Stipulation, if the Court should fail to award attorneys' fees to Class
27 Counsel in the full amount provided for in this Stipulation, no order of the Court or modification of

1 any order of the Court concerning the amount of any attorneys' fees to be paid by Defendant to Class
2 Counsel pursuant to this Settlement will constitute grounds for cancellation or termination of the
3 Stipulation or grounds for limiting any other provision of the Judgment. It is agreed that no order of
4 the Court, including any order concerning attorneys' fees, may alter or otherwise increase the
5 Maximum Settlement Amount.

6 3.7.3 The Parties (a) acknowledge that it is their intent to consummate this
7 agreement; (b) agree to cooperate to effectuate and implement all terms and conditions of the
8 Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the
9 Stipulation; (c) agree to seek and to attempt to obtain preliminary and final approval by Court of the
10 Settlement; and (d) agree to reasonably work together to seek and attempt to obtain preliminary and
11 final approval of the Stipulation should the Court not grant approval upon the first presentation.

12 3.7.4 The Parties and attorneys agree to keep the Settlement confidential until the
13 motion for preliminary approval of the Settlement is filed. Thereafter, the Parties will agree to make
14 no comments to the media or otherwise publicize the terms of the Settlement.

15 3.7.5 The Parties agree that they will not engage in making or publishing written
16 statements which are disparaging to the reputation of the other or their corporate parents and affiliates.

17 3.7.6 The Stipulation compromises claims which were contested and the subject of
18 a good faith dispute, and it will not be deemed an admission by any of the Parties as to the merits of
19 any claim or defense. The Parties agree that the amounts paid in settlement of the Litigation and the
20 other terms of the Settlement were negotiated at arms-length and in good faith with sufficient
21 information by the Parties and reflect a settlement that was reached voluntarily after consultation with
22 competent legal counsel.

23 3.7.7 All of the exhibits to the Stipulation and material and integral parts hereof and
24 are fully incorporated herein by this reference.

25 3.7.8 The Stipulation may be amended or modified only by a written instrument
26 signed by or on behalf of all Parties or their respective counsel, subject to approval by the Court.

27 3.7.9 The Stipulation constitutes the entire agreement among the Parties hereto and
28

1 no representations, warranties or inducements have been made to any party concerning the Stipulation
2 or its exhibits other than the representations, warranties and covenants contained and memorialized
3 in such documents. Except as otherwise provided herein, each party will bear its own costs.

4 3.7.10 The Parties understand and acknowledge that: (a) they have performed an
5 independent investigation of the allegations of fact and law made in connection with this Litigation;
6 and (b) even if they may hereafter discover facts in addition to, or different from, those that they now
7 know or believe to be true with respect to the subject matter of the Litigation as reflected in this
8 Settlement Agreement, that will not affect or in any respect limit the binding nature of this Settlement
9 Agreement. It is the Parties' intention to resolve their disputes in connection with this Litigation
10 pursuant to the terms of this Settlement Agreement and thus, in furtherance of their intentions, the
11 Settlement Agreement will remain in full force and effect notwithstanding the discovery of any
12 additional facts or law, or changes in law, and this Settlement will not be subject to rescission or
13 modification by reason of any changes or differences in facts or law, subsequently occurring or
14 otherwise.

15 3.7.11 Class Counsel, on behalf of the Class Members, is expressly authorized by the
16 Class Representative to take all appropriate action required or permitted to be taken by the Class
17 pursuant to the Stipulation to affect its terms and also expressly authorized to enter into any
18 modifications or amendments to the Stipulation.

19 3.7.12 Each counsel or other Person executing the Stipulation or any of its exhibits
20 on behalf of any Parties hereby warrants that such Person has full and express authority to do so.

21 3.7.13 The Stipulation may be executed in one or more counterparts. All executed
22 counterparts and each of them will be deemed to be one and the same instrument. A complete set of
23 executed counterparts will be filed with the Court.

24 3.7.14 The Stipulation will be binding upon, and inure to the benefit of, the successors
25 and assigns of the parties hereto; however, this Stipulation is not designed to and does not create any
26 third-party beneficiaries unless otherwise specifically provided herein.

27 3.7.15 The Court will retain jurisdiction with respect to implementation and
28

1 enforcement of the terms of the Stipulation, and the Parties hereto submit to the jurisdiction of the
2 Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation, in
3 conformity with California Rules of Court, Rule 3.769 and California Civil Procedure Code section
4 664.6.

5 3.7.16 The Stipulation and the exhibits hereto will be considered to have been
6 negotiated, executed and delivered, and to have been wholly performed, in the State of California,
7 and the rights and obligations of the parties to the Stipulation will be construed and enforced in
8 accordance with, and governed by, the internal, substantive laws of the State of California without
9 regard to principles of conflicts of law.

10 3.7.17 The language of all parts of this Stipulation will in all cases be construed as a
11 whole, according to its fair meaning, and not strictly for or against either party. No party will be
12 deemed the drafter of this Stipulation. The Parties acknowledge that the terms of the Stipulation are
13 contractual and are the product of negotiations between the parties and their counsel. Each party and
14 their/its counsel cooperated in the drafting and preparation of the Stipulation. In any construction to
15 be made of the Stipulation, the Stipulation will not be construed against any party and the canon of
16 contract interpretation set forth in California Civil Code § 1654 will not be applied.

17 3.7.18 Should any deadlines set forth in the Stipulation require any action to be taken
18 on a weekend or a Court holiday, then the action may be taken on the next business day, unless
19 otherwise specified by law or rule of Court, except that should the Response Deadline (or extension(s)
20 thereof specified in the Stipulation relating to a deficiency notice or a re-mailing) fall on a Saturday
21 and regular U.S. Mail service is in operation that day, then no further extension pursuant to this
22 paragraph will apply to these specific deadlines.

23 *[signatures on the following page]*
24
25
26
27
28

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

DATED: _____, 2022 By: _____
Plaintiff Mark Flach

DATED: December 15, 2022 By: Paul Hennessy
on behalf of Defendant Whisk Logistics, LLC

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

DATED: 12/14/2022, 2022 By:

Mark Flach

Plaintiff Mark Flach

DATED: _____, 2022 By: _____
on behalf of Defendant Whisk Logistics, LLC

EXHIBIT 1

NOTICE OF CLASS ACTION SETTLEMENT

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

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

The California Superior Court, County of Ventura has granted preliminary approval to a proposed settlement ("Settlement") in the matter of *Mark Flach vs. Whisk Logistics, LLC*. Because your rights are affected by this Settlement, it is important that you read this Notice of Class Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes (collectively these individuals are referred to as the "Class" or "Class Members"): Any and all persons that performed work for Defendant Whisk Logistics, LLC ("Defendant") in California pursuant to owner-operator agreements during the time period of June 23, 2018, through July 2, 2022.

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

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 2
2. What Is This Case About?	Page 2
3. Am I a Class Member? Am I a PAGA Employee?	Page 2
4. How Does This Class Action Settlement Work?	Page 2
5. Who Are The Attorneys Representing The Parties?.....	Page 3
6. What Are My Options?.....	Page 3
7. How Do I Opt Out Or Exclude Myself From This Settlement?	Page 4
8. How Do I Object To The Settlement?	Page 4
9. How Does This Settlement Affect My Rights?	Page 5
10. How Much Can I Expect To Receive From This Settlement?.....	Page 6
11. How Do I Get More Information About The Case Or The Settlement?.....	Page 7

1. Why Have I Received This Notice?

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

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

The Court will hold a Final Approval Hearing concerning the proposed settlement on [DATE], 2023 at [TIME a.m./p.m.], located at _____. The Final Approval Hearing may be continued without further notice to the Class Members. You are advised to check the Court's website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

2. *What Is This Case About?*

The Class Action filed by Plaintiff Mark Flach alleges that Whisk misclassified drivers as independent contractors instead of employees and committed the following violations of California law: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal and Rest Periods; (4) Failure to Reimburse Business Expenses; (5) Failure to Furnish Accurate Wage Statements; (6) Failure to Pay Wages on a Timely Basis; (7) Failure to Pay Sick Leave; (8) Failure to Provide Written Notice Upon Hire; (9) Violation of Unfair Competition Law; and (10) Violations of the Private Attorneys General Act, Labor Code §2699, et seq. ("PAGA").

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

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

You are a Class Member if you performed work for Defendant in the State of California pursuant to an owner-operator agreement during the time period of June 23, 2018 through July 2, 2022.

If you worked for Defendant in the State of California pursuant to an owner-operator agreement during the time period of May 10, 2021 through July 2, 2022, you are also an "PAGA Employee" under the settlement.

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

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

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

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

The Court has decided that attorneys at the law firms Fineman Poliner LLP and Olivier & Schreiber LLP are qualified as Class Counsel to represent you and all other Class Members simultaneously.

Class Counsel / Attorneys for Plaintiff	Attorneys for Defendant
FINEMAN POLINER LLP Phillip Poliner 155 North Riverview Drive Anaheim Hills, California 92808-1225 Telephone: (714) 620-1125 Email: phillip@finemanpoliner.com OLIVIER & SCHREIBER LLP Rachel Bien 128 N. Fair Oaks Ave. Pasadena, CA 91103 Telephone: (213) 325-3430 Email: rachel@os-legal.com	LEWIS BRISBOIS BISGAARD & SMITH LLP Joshua D. Carlon 633 W 5th Street, Suite 4000 Los Angeles, California 90071 Telephone: (213) 281-5235 Facsimile: (213) 250-7900

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

6. What Are My Options?

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

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

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

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

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

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

The proposed settlement includes the settlement of claims for civil penalties under the PAGA. You may not request to be excluded from the settlement of a PAGA claim. Thus, if the court approves of the settlement, even if you request exclusion from the settlement, if you worked during the PAGA Period of May 10, 2021 through July 2, 2022, you will receive an Individual PAGA Settlement Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims.

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

Class Members who do not Opt Out may object to the Settlement by submitting a written objection to the Settlement Administrator, postmarked no later than [the Response Deadline]. A written objection to the Settlement must be signed by the Class Member and dated, and additionally state the Class Member’s name, last four (4) digits of his or her Social Security number or employee identification number, the case name and number of the Action (*Mark Flach v. Whisk Logistics, LLC*, Ventura County Superior Court Case No. _____), all legal and factual bases for objection to the Settlement, whether the Class Member intends to appear at the Final Approval Hearing, and whether the Class Member is represented by legal counsel (and if so, identifying the legal counsel and providing said legal counsel’s mailing address).

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

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

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

¹ “Released Parties” means Defendant Whisk Logistics, LLC. and its parent companies, subsidiaries, affiliates, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

All claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class Members' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Litigation, including claims of failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or associated premiums, failure to provide wage statements, failure to provide compliant rest periods and/or associated premiums, failure to pay wages timely at termination, failure to reimburse for business expenses, willful misclassification, unfair competition, unlawful wage deductions, failure to provide paid sick leave and to maintain records documenting hours worked and paid sick days accrued, failure to provide written notice upon hire under Labor Code 2810.5, and violations of California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 221, 223, 225.5, 226, 226(a), 226.3, 226.7, 226.8, 246, 247.5, 353, 510, 512(a), 558, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2810.5, the applicable Wage Order of the Industrial Wage Commission, and California Business & Professions Code §§ 17200 to 17208, including without limitation all related claims for restitution and other equitable relief arising from California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys' fees or litigation costs, and any other related claims and/or penalties. The release does not extend to any claims not alleged in the Litigation and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including but not limited to those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment. This release does not include any of the claims encompassed within the Released PAGA Claims (as defined below).

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

All claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for civil penalties pursuant to PAGA, that accrued during the PAGA Period, and as a result of PAGA employees' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Litigation and the notice to the LWDA, including claims of failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or associated premiums, failure to provide wage statements, failure to provide compliant rest periods and/or associated premiums, failure to pay wages timely at termination, failure to reimburse for business expenses, willful misclassification, unlawful wage deductions, failure to provide paid sick leave and to maintain records documenting hours worked and paid sick days accrued, failure to provide written notice upon hire under Labor Code 2810.5, and violations of California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 221, 223, 225.5, 226, 226(a), 226.3, 226.7, 226.8, 246, 247.5, 353, 510, 512(a), 558, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2810.5, and the applicable Wage Order of the Industrial Wage Commission. The release does not extend to any claims not alleged in the Litigation and the notice to the LWDA.

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

The total maximum amount that Defendant has agreed to pay under this Agreement shall be up to but no more than \$755,000 (“Maximum Settlement Amount” or “MSA”).

The “Net Settlement Amount” or “NSA” means the portion of the MSA, available for distribution to Class Members after the deduction of (1) the Class Representative Service Payment to Plaintiff Mark Flach in an amount up to \$15,000 for prosecution of the Action, risks undertaken, and in exchange for a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$10,000; (3) a payment of \$10,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$251,666.67 (33 1/3% of the Maximum Settlement Amount) for attorneys’ fees and an amount not to exceed \$30,000 for litigation costs. All of these payments are subject to court approval.

The portion of the Maximum Settlement Amount which is allocated to the settlement of the PAGA claims in the Litigation is Ten Thousand Dollars (\$10,000). Of this \$10,000, 75%, or \$7,500, will be paid to the Labor and Workforce Development Agency (“LWDA”), and the remaining 25%, or \$2,500, will be distributed to the PAGA Employees (the “Individual PAGA Settlement Payment”).

A. How Will Settlement Payments Be Calculated?

Individual Class Settlement Shares to Class Members: For each Participating Class Member, the Participating Class Member’s Individual Class Workdays will be divided by the total number of Participating Class Member Workdays. The resulting number will then be multiplied by the Net Settlement Amount.

Individual PAGA Settlement Payments to PAGA Employees: For each PAGA Employee, the PAGA Employee’s Individual PAGA Workdays will be divided by the total number of PAGA Employees Workdays. The resulting number will then be multiplied by \$2,500 (25% of the \$10,000 to be paid in settlement of the PAGA claims in the Litigation).

Thus, the value of each Class Member’s and/or PAGA Employee’s Settlement payment ties directly to the amount of days that he or she worked during the relevant time periods.

B. How Will My Settlement Payment Be Taxed?

Each Class Member’s Individual Class Settlement Share will be apportioned as follows: 10% wages, 50% business expenses, 30% interest, and 10% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee’s wages and all other authorized and required withholdings and shall be reported on IRS W-2 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Defendant shall pay the employer portion of all such tax withholdings on the Individual Class Settlement Share amounts paid as wages separate from, and in addition to, the Maximum Settlement Amount. The Individual Settlement Share amounts paid as penalties, expenses and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees’ wages and shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the employee share of payroll tax withholdings shall be withheld from each Settlement Class Member’s Individual Class Settlement Share.

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

C. What Is My Settlement Payment?

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

If you are also a PAGA Employee, you will receive a share of \$2,500 (25% of the \$10,000 to be paid in settlement of the PAGA claims in the Litigation). Based upon the calculation above, your approximate share is as follows: \$ [REDACTED]. This is based on the Class List which shows you worked [REDACTED] workdays during the PAGA Period.

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

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

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

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may contact Class Counsel, whose contact information is above, and they will provide you with a copy of the Settlement documents or case documents free of charge. You can also visit the Court's website at [REDACTED]. Click the "Accept" button at the bottom of the screen, then click "Click here to access the Portal (Classic)." Click the "Smart Search" button, then enter the case number [REDACTED].

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