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10 on behalf of themselves and all others similarly situated

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19 KAL TRAILERS & LEASING INC., KAL PARTZ, INC.
20 and KAL FREIGHT INC.

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **FOR THE COUNTY OF SAN BERNARDINO**

23 JEAN P. GRAMMATICO JR. and
24 MICHAEL A. ROJAS, on behalf of
25 themselves and all others similarly situated;

26 Plaintiff,

27 v.

28 KAL TRAILERS & LEASING INC., a
California corporation; KAL PARTZ INC., a
California corporation; KAL FREIGHT INC.,
a Texas corporation; and DOES 1 through
100, inclusive

Defendants.

Case No.: CIVSB2214750

[Assigned for all purposes to the Hon. Joseph
T. Ortiz - Dept. "S17"]

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

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiffs JEAN P. GRAMMATICO JR. ("Mr. Grammatico") and
3 MICHAEL A. ROJAS ("Mr. Rojas")(collectively, "Plaintiffs"), on behalf of themselves and all
4 others similarly situated, and on behalf of the State of California, and Defendants KVL TIRES
5 INC. ("KVL Tires"), KAL TRAILERS & LEASING INC. ("KAL Trailers"), KAL PARTZ
6 INC. ("KAL Partz") and KAL FRIEGHT INC. ("KAL Freight") and is approved by their
7 respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

8 **A. Definitions**

9 1. "Action" or "Lawsuit" means and refers to the case entitled *Jean P. Grammatico,*
10 *et al. v. KAL Trailers & Leasing Inc., et al.*, San Bernardino County Superior Court, Case No.
11 CIVSB2214750.

12 2. "Aggrieved Employee(s)" means all current and former non-driver California
13 non-exempt employees who worked for Defendants in the State of California during the PAGA
14 Period. It is estimated that there are approximately 201 Aggrieved Employees and 6,100 pay
15 periods during the PAGA Period.

16 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
17 Action and PAGA Settlement Agreement and Release of Claims.

18 4. "Class" is defined all current and former non-driver California non-exempt
19 employees who worked for Defendants in the State of California during the Class Period. It is
20 estimated that there are approximately 201 Class Members and 11,800 workweeks during the
21 Class Period.

22 5. "Class Member(s)" refers to individual members of the Class.

23 6. "Class Counsel" refers to Michael Nourmand and James De Sario of The
24 Nourmand Law Firm, APC.

25 7. "Class Data" means a complete list that Defendants will diligently and in good
26 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
27 which shall include, for each Class Member: the individual's full name; last known address;
28 Social Security Number; total Weeks Worked during the PAGA Period and the Class Period.

1 8. “Class Period” is deemed to be any time during the period of July 11, 2018
2 through June 7, 2024.

3 9. “Class Representatives” or “Plaintiffs” means and refers to Plaintiffs Mr.
4 Grammatico and Mr. Rojas.

5 10. “Complaint” refers to the operative complaint, which as part of the Settlement, the
6 Parties have agreed to stipulate to file a Second Amended Complaint (“SAC”). The SAC will be
7 the operative complaint and will assert the same class action and PAGA representative claims as
8 the First Amended Complaint (“FAC”), but will seek to add an additional named defendant KVL
9 Tires and plead an additional cause of action for the failure to reimburse for business related
10 expenses under Labor Code Section 2802.

11 11. “Court” (or “Judge”) means the California Superior Court, County of San
12 Bernardino.

13 12. “Defendants” means and refers to Defendants KAL Trailers, KAL Partz, KAL
14 Freight and KVL Tires.

15 13. “Defendants’ Counsel” or “Defense Counsel” means and refers to Nicole Shaffer,
16 Esq. and Semarnpreet Kaur, Esq. of Jackson Lewis P.C.

17 14. “Effective Date” means the date by when all of the following have occurred: (i) a
18 long form settlement agreement has been executed by all Parties and their respective counsel; (ii)
19 the Court has given preliminary approval to the Settlement; (iii) the Class Notice has been given
20 to the Class Members, providing them with an opportunity to dispute information contained in
21 the Class Notice, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has
22 held a Final Approval hearing and entered a final order and judgment certifying the Class and
23 approving this Settlement; and (v) the later of the following events: 60 calendar days following
24 entry of the Court’s final order approving the settlement; or if any appeal, writ or other appellate
25 proceeding opposing this Settlement has been filed within 60 calendar days following entry of
26 the Court’s final order approving the Settlement, then when any appeal, writ or other appellate
27 proceeding opposing the settlement has been resolved finally and conclusively with no right to
28 pursue further remedies or relief. In this regard, it is the intention of the Parties that the

1 Settlement shall not become effective until the Court's order approving the Settlement is
2 completely final, there is no further recourse by an appellant or objector who seeks to contest the
3 Settlement.

4 15. "Escalator Clause" Defendants represent that there are approximately 201 Class
5 Members, who collectively worked a total of approximately 11,800 Workweeks during the Class
6 Period. If the total count of Workweeks (as contained in the Class Data) exceeds 12,980 (10%
7 more than Defendants' representation), then Defendants shall have the option to either: (i)
8 increase the Settlement Amount by \$46.61 (Settlement Amount divided by 11,800) for each
9 additional Workweek above 12,980 , or (ii) change the end date of the Class Period to a date
10 which results in no more than 12,980 total Workweeks. However, if Defendants elect to change
11 the end date of the Class Period, then: (i) Defendants must make the election at least 10 days
12 prior to Plaintiff filing the motion for preliminary approval, and (ii) in no event shall Defendants
13 be permitted to change the end date to a date prior to April 8, 2024 (the date of mediation).

14 16. "Final Approval" refers to the order of the Court granting final approval of this
15 Settlement Agreement and entering a judgment approving this Agreement on substantially the
16 terms provided herein or as may be modified by subsequent agreement of the Parties.

17 17. "Individual Class Payment" refers to each Participating Class Members share of
18 the Net Settlement Amount, as further discussed in Paragraph 49(c) below.

19 18. "Individual PAGA Payment" refers to each Aggrieved Employees share of the
20 PAGA Penalties, as further discussed in Paragraph 49(c) below.

21 19. "Net Settlement Amount" shall have the meaning ascribed to it in Paragraph 49(b)
22 below.

23 20. "Notice" means the notice of proposed class settlement that will be sent to the
24 Class Members, and which will advise each Class Member of the settlement and his or her
25 estimated "Individual Settlement Amount" and will further advise of the setting of a Final
26 Approval Hearing.

27 21. "Notice Packet" means the Notice, Request for Exclusion Form, the Objection
28 Form, and the Dispute Form to be sent to all Class Members.

1 22. “Objecting Class Member” means a Class Member, other than Plaintiffs, who
2 submit a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 70(c)
3 below.

4 23. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
5 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
6 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
7 as the individual PAGA payment allocated to each Aggrieved Employee.

8 24. “PAGA Period” is deemed to be any time during the period of July 8, 2021
9 through June 7, 2024.

10 25. “Participating Class Member” means any and all Class Members who are deemed
11 to participate and receive an Individual Settlement Payment and do not opt-out by submitting
12 timely valid Requests for Exclusion.

13 26. “Parties” or “Settling Parties” mean Plaintiffs and Defendants, collectively.

14 27. “Preliminary Approval Date” means the date the Court approves the Settlement
15 Agreement and enters the Preliminary Approval Order.

16 28. “Preliminary Approval Order” means the judicial Order to be entered by the
17 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
18 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
19 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
20 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
21 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
22 object to Plaintiffs’ motion for preliminary approval but will be provided with an opportunity to
23 review and comment upon the motion before it is filed.

24 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
25 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
26 from which the settlement payments shall be made.

27 30. “Released Class Claims” or “Class Claims” by the Participating Class Members
28 upon Final Approval of the Settlement will include all claims stated in the operative Complaint

1 and those based solely upon the facts in the operative Complaint, including: (1) failure to pay
2 overtime wages (2) failure to pay minimum wage (3) failure to provide rest periods (4) failure to
3 pay meal periods (5) failure to pay all wages upon termination (6) failure to issue accurate wage
4 statements (7) unfair competition and (8) failure to reimburse for business related expenses.

5 31. "Released PAGA Claims" means any and all PAGA claims that Plaintiffs alleged
6 against the Released Parties based on the facts stated in the relevant LWDA notice letters and
7 only to the extent that they are alleged in the operative Complaint, including all PAGA claims
8 seeking civil penalties under the PAGA based on the facts or claims alleged in the LWDA notice
9 letters and operative Complaint, including: (1) failure to pay overtime wages (2) failure to pay
10 minimum wage (3) failure to provide rest periods (4) failure to pay meal periods (5) failure to
11 pay all wages upon termination (6) failure to issue accurate wage statements (7) unfair
12 competition and (8) failure to reimburse for business related expenses. The time period
13 governing the Released PAGA Claims shall be any time during the PAGA Period.

14 32. "Released Parties" means Defendants and all of their present and former officers,
15 directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers,
16 reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, and successors.

17 33. "Release Period" shall be the time period governing the Released Class Claims,
18 which shall be the same as the Class Period.

19 34. "Release" shall mean the release and discharge of the Released Class Claims by
20 Plaintiffs and all Participating Class Members and their assignees.

21 35. "Response Deadline" is 45 calendar days from the date the Notice is mailed to the
22 Class Members.

23 36. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 70(a)
24 below.

25 37. "Settlement Amount or Gross Settlement Amount" is \$550,000, subject to the
26 Escalator Clause, as further discussed in Paragraph 49(c) below. Defendants will also pay their
27 share of employer taxes in addition to the Settlement Amount, in that any portion of the Class
28 Member's Individual Settlement Amount that are designated as "wages" for purposes of tax

1 reporting, the employer's taxes, employer contributions of all federal, state, and local taxes
2 (including, FICA, FUTA and SDI) will be paid by Defendants in addition to the Settlement
3 Amount.

4 38. "Service Payment" or "Service Award" means the amount approved by the Court
5 to be paid to Class Representatives, Mr. Grammatico and Mr. Rojas in addition to their
6 Individual Settlement Payment as a Participating Class Members and individual PAGA payment
7 as an Aggrieved Employees.

8 39. "Settlement Administrator" means and refers to Phoenix Settlement
9 Administrators, the third-party class action settlement administrator agreed to by the Parties, that
10 will provide the Notice Packet to the Class Members and distribute the settlement amounts as
11 described in this Agreement.

12 40. "Settlement Administration Costs" means the costs payable from the Settlement
13 Amount to the Settlement Administrator for administering this Settlement, including, but not
14 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and
15 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,
16 reporting and remittance obligations, distributing the Settlement Amount, and providing
17 necessary reports and declarations, as requested by the Parties. The Settlement Administration
18 Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by
19 the Court, regardless of any additional costs that the Settlement Administrator may request or
20 feel is necessary to administer the Settlement.

21 41. "Work Weeks" or "Weeks Worked" in the context of a Class Members means any
22 and all work weeks during the Class Period during which the Class Member performed work for
23 Defendants. Likewise, in the context of Aggrieved Employees, it means any and all weeks
24 worked during the PAGA Period during which the Aggrieved Employee performed work for
25 Defendants.

26 **B. General Terms**

27 42. On July 11, 2022, Plaintiffs filed the instant class action, alleging that Defendants
28 (1) failed to pay overtime wages (2) failed to pay minimum wage (3) failed to provide rest

1 periods (4) failed to pay meal periods (5) failed to pay all wages upon termination (6) failed to
2 issue accurate wage statements (7) engaged in unfair competition. On January 19, 2023,
3 Plaintiffs filed a FAC adding causes of action under PAGA, since after being provided with
4 notice of alleged Labor Code violations the Labor & Workforce Development Agency
5 ("LWDA") elected not to investigate. Defendants filed an Answer to the First Amended
6 Complaint. On August 6, 2024, Plaintiffs filed a Stipulation to file SAC Action Complaint which
7 asserts the same class action and PAGA representative claims as the FAC, but to an additional
8 named defendant KVL Tires and pleads an additional cause of action for the failure to reimburse
9 for business related expenses under Labor Code Section 2802.

10 43. Defendants deny Plaintiffs' claims and allegations and contend that the Action is
11 not suitable for class certification.

12 44. The Class Representatives believe they can proceed with the representative and
13 class claims, that the Action is meritorious, and that class certification is appropriate.

14 45. The Parties have conducted a thorough investigation into the facts of the Action.
15 This includes conducting formal and informal discovery, including Plaintiffs serving several sets
16 of formal written discovery on Defendants (i.e., Form Interrogatories, Request for Production of
17 Documents, Specially Prepared Interrogatories, *Belaire-West* notice to obtain contact
18 information), Plaintiffs being deposed in-person, obtaining a sampling of time and payroll
19 records for W2 employees, obtaining information related to relevant policies and practices
20 concerning timekeeping, meal periods, rest periods, reimbursement, etc., obtaining data points
21 for number of non-exempt employees, workweeks, pay periods, average hourly rate, etc. within
22 the relevant Class and PAGA Periods. During the litigation of the Action, the Parties also
23 conducted an Informal Discovery Conference and Plaintiffs had prepared drafts of Motions to
24 Compel until the Parties agreed to participate in mediation. Class Counsel is both
25 knowledgeable about and has done extensive research with respect to the applicable law and
26 potential defenses to the claims of the Class. Class Counsel has diligently pursued an
27 investigation of the Class Members' claims against Defendants. Based on the foregoing data and
28 on their own independent investigation and evaluation, Class Counsel is of the opinion that the

1 settlement with Defendants for the consideration and on the terms set forth in this Settlement
2 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in
3 light of all known facts and circumstances, including the risk of significant delay and uncertainty
4 associated with litigation, various defenses asserted by Defendants, and numerous potential
5 appellate issues.

6 46. On April 8, 2024, Plaintiffs and Defendants participated in a full-day mediation
7 with Hon. Daniel Buckley (Ret.), a well-respected wage-and-hour mediator. At the conclusion
8 of mediation and extensive arms-length negotiations, Judge Buckley issued a mediator's
9 proposal which was ultimately accepted by the Parties. As part of the Settlement, the Parties will
10 stipulate to filing a SAC, which will be the operative Complaint, as set forth supra. Additionally,
11 the Parties are aware of a similar back-filed wage and hour class action, filed September 6, 2023
12 (approximately 15 months after this Action) entitled *Rios v. KAL Tires Inc., et al.* – San
13 Bernardino Superior Court Case No. CIVSB2321107 ("Rios Action"). The Settlement in this
14 Action will subsume the claims in the later filed Rios Action.

15 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
16 to be performed or judgment to be entered pursuant to the terms of the Settlement and
17 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
18 any statute or law or liability on the claims or allegations in the Action.

19 48. Stipulation for Class Certification. For settlement purposes only, Defendants will
20 stipulate that the Class Members described herein who do not Request Exclusion from the Class
21 may be conditionally certified as a Class. This stipulation to certification is in no way an
22 admission that class action certification is proper and shall not be admissible in this action except
23 for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to
24 issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall
25 become null and void ab initio and shall have no bearing on, and shall not be admissible in this
26 Action in connection with, the issue of whether certification would be appropriate in a non-
27 settlement context. Defendants expressly reserve their rights and declare that they would
28 continue to oppose class certification and the substantive merits of the case should the Court fail

1 to issue Final Approval. Plaintiffs expressly reserve their rights and declare that they will
2 continue to pursue class certification and a trial should the Court fail to issue Final Approval.

3 **C. Terms of Settlement**

4 49. The financial terms of the Settlement are as follows:

5 (a) Settlement Amount: The Parties agree to settle this Action for the
6 Settlement Amount, \$550,000, which is the maximum amount that will be paid by Defendants
7 (unless the Escalator Clause is triggered), which includes payments to the Participating Class
8 Members, PAGA Penalties (to the Aggrieved Employees and LWDA), Attorneys' Fees and
9 Costs Award, the Service Payment to the Class Representatives, and Settlement Administration
10 Costs. Defendants will also pay their share of employer taxes in addition to the Settlement
11 Amount, in that any portion of the Class Member's Individual Settlement Amount that are
12 designated as "wages" for purposes of tax reporting, the employer's taxes, employer
13 contributions of all federal, state, and local taxes (including, FICA, FUTA and SDI) will be paid
14 by Defendants in addition to the Settlement Amount.

15 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
16 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class
17 Representatives as awarded by the Court, the Settlement Administration Costs, and PAGA
18 Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or
19 Settlement Administrator Costs, or either increases or decreases the amount allocated to the
20 PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to
21 the Participating Class Members.

22 (c) Individual Class Payments for the Class will be calculated and apportioned
23 from the Net Settlement Amount based on the number of Weeks Worked by a Class Member
24 during the Class Period. Each specific Individual Class Payment will be calculated by: (a)
25 dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating
26 Class Members during the Class Period, and (b) multiplying the result by each Participating
27 Class Members' Weeks Worked. The entire Net Settlement Amount will be disbursed to all
28 Participating Class Members. If there are any valid and timely Requests for Exclusion, the

1 Settlement Administrator shall proportionally increase the Individual Class Payment for each
2 Participating Class Member according to the number of Weeks Worked, so that the amount
3 actually distributed to Participating Class Members equals one hundred percent (100%) of the
4 Net Settlement Amount.

5 (d) Allocation of Individual Class Payments and Individual PAGA Payments:

6 All Individual PAGA Payments will be allocated as follows: 100% of each Aggrieved
7 Employee's pro-rata share of the 25% allocated for PAGA penalties shall be allocated as
8 penalties. The portion allocated to civil penalties will be reported on an IRS Form-1099 by the
9 Settlement Administrator. All Individual Class Payments will be allocated as follows: 1/3 of
10 each Individual Class Payment will be allocated for the settlement of wage claims; and the
11 remaining 2/3 will be allocated to the settlement of claims for interest and statutory penalties.
12 The portion allocated to wages in each Individual Class Payment will be reported on an IRS
13 Form W-2 and the portion allocated to interest and penalties will be reported on an IRS Form-
14 1099 by the Settlement Administrator.

15 (e) Service Payment to Class Representatives: The amount, if any, awarded
16 to the Class Representatives as a Service Payment will be set by the Court in its discretion, not to
17 exceed \$10,000 for each Plaintiff (i.e., \$10,000 to Mr. Grammatico and \$10,000 to Mr. Rojas), in
18 exchange for the service that Plaintiffs performed on behalf of the Class. Defendants agree not
19 to oppose this request. The Service Payment to Plaintiffs will be paid out of the Settlement
20 Amount. The Class Representatives will be issued an IRS Form 1099 in connection with this
21 payment. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on
22 this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiffs
23 less than the requested amount shall not be a basis for Class Counsel to void this Settlement
24 Agreement. Should the Court approve a lesser amount for the Service Payment, the difference
25 shall be added to the Net Settlement Amount to be distributed to the Participating Class
26 Members.

27 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
28 request by Class Counsel to the Court for an award of attorneys' fees of \$183,333.31, which is

1 one-third of the Settlement Amount, plus reasonable litigation costs not to exceed \$20,000
2 (“Attorney’s Fees and Cost Award”). Defendants agree not to oppose any contention by Class
3 Counsel that attorneys’ fees should be based on the common fund theory. The Attorneys’ Fee
4 and Cost Award shall be paid from the Settlement Amount, and, except for this award,
5 Defendants shall have no further obligation to pay any attorneys’ fees, costs or expenses to Class
6 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
7 difference shall be added to the Net Settlement Amount to be distributed to the Participating
8 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
9 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
10 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
11 of attorneys’ fees and costs awarded by the Court.

12 (g) Settlement Administration Costs: The fees and other charges of the
13 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$7,750.00,
14 unless (1) the Escalator Clause is triggered (whereby any reasonable increase in Settlement
15 Administration Costs shall be paid from the increased Settlement Amount, subject to Court
16 approval), or (2) as otherwise approved by all Parties and the Court.

17 (h) PAGA Penalties: The Parties agree that \$25,000 is allocated to PAGA
18 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
19 amount, \$18,750 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
20 Private Attorney General Act of 2004 (“PAGA”) and \$6,250 (25%) will form the Individual
21 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
22 on a Work Week basis, which will be treated as civil penalties and shall be reported as required
23 on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

24 (i) Tax Liability: Class Counsel and Defendants make no representations as
25 to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiffs and
26 the Class Members are not relying on any statement or representation by Class Counsel or
27 Defendants in this regard. Plaintiffs, Participating Class Members, and Aggrieved Employees
28 understand and agree that they will be solely responsible for the payment of any taxes and

1 penalties assessed on their respective Individual Class Payments and Individual PAGA
2 Payments, described herein. Forms 1099 will be distributed in the manner required by the
3 Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code,
4 the regulations promulgated thereunder, or other applicable tax law, is changed after the date of
5 this Agreement, the processes set forth in this Section may be modified in a manner to bring
6 Defendants into compliance with any such changes. Plaintiffs, Participating Class Members, and
7 Aggrieved Employees understand and agree that, aside from the employer's share of payroll
8 taxes on payments attributed as wages, they will be solely responsible for the payment of any
9 taxes and penalties assessed on their respective payments described herein.

10 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
11 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"
12 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
13 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO
14 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
15 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
16 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
17 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
18 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
19 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
20 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
21 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
22 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
23 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
24 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
25 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
26 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
27 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
28 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION

1 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
2 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
3 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
4 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
5 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

6 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
7 Under no circumstances will any portion of the Settlement Amount revert to Defendants.
8 Participating Class Members and Aggrieved Employees will not have to make a claim to receive
9 an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
10 Individual Class Payment or Individual PAGA Payments will be made directly to each
11 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
12 responsible for accurately and timely reporting and remittance obligations with respect to
13 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
14 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
15 forth herein.

16 (l) Class Counsel and Plaintiffs believe that the Settlement is fair and
17 reasonable and will so represent same to the Court.

18 **D. Release by the Participating Class Members**

19 50. Upon entry of the Final Approval Order and Defendants' funding of the
20 Settlement Amount, and except as to such rights or claims as may be created by this Agreement,
21 Plaintiff and the Participating Class Members will forever completely release and discharge the
22 Released Parties from the Released Class Claims for the Release Period.

23 51. Each Participating Class Member will be deemed to have made the foregoing
24 Release as if by manually signing it.

25 52. Class Representatives, on behalf of themselves and the Class, acknowledge and
26 agree that the claims for unpaid wages and untimely payment of wages in the Action are
27 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
28 them. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that

1 California Labor Code Section 206.5 is not applicable to the Parties or Settlement. Labor Code §
2 206.5 provides in pertinent part as follows: "An employer shall not require the execution of any
3 release of any claim or right on account of wages due, or to become due, or made as an advance
4 on wages to be earned, unless payment of those wages has been made."

5 **E. Release of PAGA Claims**

6 53. Upon entry of the Final Approval Order and Defendants' funding of the
7 Settlement Amount, Plaintiffs – in their individual capacity and on behalf of the State of
8 California and LWDA – shall completely release and discharge the Released Parties from the
9 Released PAGA Claims for the PAGA Period.

10 54. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
11 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
12 releasing the Released PAGA Claims.

13 55. It is the intent of the Parties that the Final Approval Order shall have full
14 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

15 **F. Release by Plaintiffs and Class Representatives**

16 56. Class Representatives do hereby, for themselves and their spouses, heirs,
17 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
18 guardians, personal representatives, and assigns forever and completely release and discharge the
19 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
20 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
21 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
22 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
23 from the beginning of time through the execution of this Stipulation, whether known or
24 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
25 upon, or relating to Class Representatives' employment with Defendants or the remuneration for
26 or termination of such employment (the "Class Representatives' Claims").

27 57. Without limiting the generality of the foregoing, this general release by Plaintiffs
28 includes all federal, state and local statutory claims, federal and state common law claims

(including but not limited to those for contract, tort and equity), including without limitation any claims for breach of any implied or express contract or covenant; claims for promissory estoppel; claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits (except workers' compensation benefits); claims for failure to hire, public policy violations, defamation, invasion of privacy, fraud, misrepresentation, emotional distress, assault/battery, or other common law or tort matters; claims of harassment, retaliation or discrimination based on age, race, color, religion, sex, national origin, ancestry, physical or mental disability, protected activity, medical condition, marital status, sexual preference, union activity, or veteran status; claims under the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991; 42 USC sec. 1981, 42 USC sec. 1983, the Older Workers Benefit Protection Act, the Family and Medical Leave Act; claims for unfair competition; claims based on legal restrictions on Defendants' right to terminate, not to hire or promote employees, or to change an employee's compensation; and claims based on any federal, state or other governmental statute, regulation or ordinance, all statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, or any other claims arising under the Fair Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code section 17200 et seq.), the California Labor Code, or Industrial Welfare Commission Wage Orders, or arising out of or based upon the following categories of allegations regardless of the forum in which they may be brought, to the fullest extent such claims are releasable by law: (i) all claims for unpaid overtime; (ii) all claims for unpaid minimum wages; (iii) all claims for meal break violations; (iv) all claims for rest period violations; (v) all claims for paid sick leave violations; (vi) all claims for the failure to timely pay wages upon termination; (vii) all claims for the failure to timely pay wages during employment; (viii) all claims for wage statement violations; (ix) all claims for reporting time pay; and (x) all other penalties recoverable for such claims under PAGA.

1 58. Plaintiffs agree that there is a risk that any injury that they may have suffered by
2 reason of the Released Parties' relationship with them might not now be known, and there is a
3 further risk that said injuries, whether known or unknown at the date of this Settlement
4 Agreement, might possibly become progressively worse, and that as a result thereof further
5 damages may be sustained. Nevertheless, Plaintiffs agrees to forever and fully release and
6 discharge the Released Parties, and understands that by the execution of this Settlement
7 Agreement no further claims for any such injuries that existed at the time of the execution of this
8 Settlement Agreement may ever be asserted by Plaintiffs with respect to claims arising in the
9 time period from the beginning of time to the execution of this Settlement Agreement.

10 59. Plaintiffs expressly waive and relinquish all rights and benefits afforded by
11 Section 1542 of the Civil Code of the State of California and does so understanding and
12 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
13 of the State of California states:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
15 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
16 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
17 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
18 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
 OR RELEASED PARTY.

19 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
20 full and complete release and discharge of all parties, Class Representatives expressly
21 acknowledge that this Settlement Agreement is intended to include in its effect, without
22 limitation, all claims that Class Representatives knew of, as well as all claims that they do not
23 know or suspect to exist in their favor against the Released Parties, or any of them, for the time
24 period from the beginning of time to the execution of this Settlement Agreement, and that this
25 Settlement Agreement contemplates the extinguishment of any such Class Representative's
26 claims. Notwithstanding the above, the general release by Class Representative shall not extend
27 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
28 that may not be released by law.

1 **G. Interim Stay of Proceedings**

2 60. Pending completion of all prerequisites necessary to effectuate this Settlement,
3 the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such
4 as are necessary to effectuate the Settlement.

5 **H. Notice Process**

6 61. Appointment of Settlement Administrator. The Parties have agreed to the
7 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
8 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
9 independently reviewing and verifying documentation associated with any claims or opt-out
10 requests, resolving any disputes regarding the calculation or application of the formula for
11 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
12 Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and
13 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
14 orders.

15 62. Disputes Regarding Settlement Administration. Any and all disputes relating to
16 administration of the Settlement by the Settlement Administrator (except for disputes regarding
17 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
18 over the terms and conditions of this Agreement, until Plaintiffs and Defendants notify the Court
19 that all payments and obligations contemplated by this Agreement have been fully carried out.
20 Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to
21 resolve the dispute without the necessity of Court intervention. The Settlement Administrator
22 shall also be responsible for determining the employer share of taxes due to be paid by
23 Defendant under this Agreement and for issuing to Plaintiffs, Participating Class Members, and
24 Aggrieved Employees, and Class Counsel any Tax Forms as may be required by law for all
25 amounts paid pursuant to this Agreement.

26 63. Class Data. Within fourteen (14) calendar days after entry of the Preliminary
27 Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The
28 Settlement Administrator will run a check of the Class Members' addresses against those on file

1 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
2 Settlement Administrator will remain confidential and will not be used or disclosed to anyone,
3 except as required by applicable tax authorities, pursuant to Defendants' express written consent,
4 or by order of the Court. Although Class Counsel will not be provided with the list of Class Data,
5 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
6 the Action and Settlement.

7 64. Total Workweeks. At least five (5) calendar days prior to mailing the Notice
8 Packet, the Settlement Administrator shall provide a spreadsheet to Class Counsel and Defense
9 Counsel containing a preliminary calculation of all payments to be paid from the Settlement
10 Amount, including the estimated Individual Class Payments to each Class Member and
11 Individual PAGA Payments to each Aggrieved Employee (a person's name shall be redacted and
12 a control number used in place of the name). In the event that the total Workweeks worked by
13 all Class Members triggers the Escalator Clause, the Settlement Administrator shall notify the
14 Parties of the increased Settlement Amount, and related increased payments from the Settlement
15 Amount, including increased Attorneys' Fees and Costs and any increased Settlement
16 Administration Costs, all of which shall be subject to Court approval.

17 65. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
18 Settlement Administrator to the Class Members, by first class mail, in English and Spanish,
19 within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data.
20 For all Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form,
21 an Objection Form, and a Dispute Form. The Settlement Administrator shall use standard
22 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
23 envelopes are returned.

24 66. Returned Notice Packets. The Settlement Administrator will take steps to ensure
25 that the Notice Packet is received by all Class Members, including utilization of the National
26 Change of Address Database maintained by the United States Postal Service to review the
27 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
28 Member for whom an updated address is located within ten (10) calendar days following both

1 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
2 The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the
3 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
4 the Response Deadline or fifteen (15) calendar days after the remailing of the Notice Packet.

5 67. Presumption Regarding Receipt of Notice Packet. It will be conclusively
6 presumed that if an envelope has not been returned to Settlement Administrator by the Response
7 Deadline that the Class Member received the Notice Packet.

8 68. Disputes Regarding Class Data. Class Members are deemed to participate in the
9 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
10 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
11 Payment and Individual PAGA Payment, as well as the number of Weeks Worked during the
12 Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
13 feel they should be credited with more Work Weeks in the Class Period and the PAGA Period
14 than Defendants' records show by timely submitting evidence to the Settlement Administrator.
15 Defendants' records will be presumed determinative absent reliable evidence to rebut
16 Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by
17 the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel
18 who agree to meet and confer in good faith about the evidence to determine the Class Member's
19 actual number of Work Weeks, and estimated Individual Class and PAGA Payments. If Class
20 Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
21 Settlement Administrator to render a final decision. Class Members and Aggrieved Employees
22 will have until the Response Deadline to dispute Weeks Worked, object or opt out, unless
23 extended by the Court. In the event that the Settlement Administrator increases the number of
24 Weeks Worked for any Settlement Class Member, then the Settlement Administrator will
25 recalculate the Individual Settlement Payments; accordingly to assess if the Escalator Clause is
26 triggered to provide information to the Defendants.

27 69. Declaration of Due Diligence. The Settlement Administrator shall provide
28 counsel for the Parties, at least five (5) days after the initial Response Deadline, a declaration of

1 due diligence and proof of mailing with regard to the mailing of the Notice Packet.

2 70. Class Members' Rights. Each Class Member will be fully advised of the
3 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
4 from the Class Claims portion of the Settlement. All Parties, signatories and their counsel shall
5 not encourage opt-outs or objections to this Agreement. The Parties specifically agree not to
6 solicit opt-outs, directly or indirectly, through any means. The Notice Packet will inform the
7 Class Members of the Court-established deadlines for filing objections or requesting exclusion
8 from the Settlement in accordance with the following guidelines:

9 (a) Requests for Exclusion from Class. Any Class Member, other than
10 Plaintiffs, may request to be excluded from the Class by completing the Request for Exclusion
11 Form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the
12 Settlement Administrator and postmarked on or before the Response Deadline in order to be
13 timely, unless the Parties otherwise agree in writing. Any such Request must be made in
14 accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
15 attach each Request for Exclusion to its declaration of due diligence and file with the Court prior
16 to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance
17 with these requirements: (i) will not have any rights under this Agreement, including the right to
18 object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments
19 under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any
20 Class Member who is an Aggrieved Employee who requests timely exclusion will still be subject
21 to the Released PAGA Claims to the fullest extent permitted by law and receive an Individual
22 PAGA Payment. All Parties and their counsel, including Defendants and their agents and
23 employees, shall not encourage or solicit opt-outs or objections, directly or indirectly, through
24 any means.

25 (b) Binding Effect on Participating Class Members. All Participating Class
26 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
27 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
28 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the

1 Settlement.

2 (c) Objections to Settlement. Any Class Member, other than Plaintiffs, who
3 does not submit a valid and timely Request for Exclusion may object to the terms of this
4 Agreement by completing the Objection Form provided within the Notice Packet or appear in-
5 person at the final fairness hearing. If any Class Member intends to object by mailing the
6 Objection Form to the Settlement Administrator, the Objection Form must be postmarked on or
7 before the Response Deadline in order to be timely, unless the Parties otherwise agree in writing.
8 Additionally, any objection must be made in accordance with the terms set forth in the Notice
9 Packet. The Settlement Administrator shall provide any Objection Forms to Class Counsel and
10 Defense Counsel within three (3) days of receipt, and the Settlement Administrator shall attach
11 the same to its declaration of due diligence and file with the Court prior to the Final Approval
12 Hearing. Any Participating Class Member who files a written Objection Form remains eligible
13 to receive monetary compensation from the Settlement. Plaintiff and Defendants shall not be
14 responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her
15 counsel related to any objections to the Settlement. Submitting an objection does not preserve
16 the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party
17 of record by timely and properly intervening or filing a motion to vacate the judgment under
18 Code of Civil Procedure § 663.

19 (d) Failure to Object. Any Class Member who does not timely and properly
20 become a party of record by intervening or filing a motion to vacate the judgment waives any
21 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
22 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
23 under California Code of Civil Procedure § 473, and extraordinary writs.

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

27 (f) Class Members will have until the Response Deadline to object or submit
28 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement

1 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
2 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
3 Counsel or Defense Counsel.

4 71. Funding of the Settlement Amount. Defendants shall deposit the Settlement
5 Amount and its share of employer taxes with the Settlement Administrator within fifteen (15)
6 calendar days after the Effective Date. Once Defendants have complied with their obligation set
7 forth in this paragraph, they shall be deemed to have satisfied all of the terms and conditions of
8 this Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall
9 have no further funding obligations under the Agreement, regardless of what occurs with respect
10 to the further administration of the Settlement. The Settlement Administrator (and not
11 Defendants) shall issue the applicable Tax Forms reflecting all payments to the Class Members.

12 72. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
13 Settlement Amount by Defendants, the Settlement Administrator shall mail the Individual Class
14 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
15 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service
16 Payment to the Class Representatives, the payment to the LWDA for PAGA Penalties, mail to
17 the Aggrieved Employees their portion of the PAGA Penalties, and will pay itself the Settlement
18 Administration Costs.

19 73. Deadline for Cashing Settlement Checks. Participating Class Members and
20 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
21 Administrator to cash their settlement checks. The release will be binding upon all Participating
22 Class Members who do not cash their checks within the 180-day period. In the event that any
23 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
24 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
25 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
26 Counsel of the results. If a new address is located by these means, the Administrator will have
27 ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class
28 Counsel, Plaintiffs, nor the Settlement Administrator will have any liability for lost or stolen

1 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
2 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
3 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
4 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
5 payment on such check. If the check in question has not been negotiated prior to the stop
6 payment order, the Settlement Administrator will issue a replacement check.

7 a. If any Participating Class Member's check is not cashed within the time
8 periods noted above, the check will be void and a stop-payment will be issued, and the
9 Settlement Administrator shall issue the unclaimed funds to the California State Controller's
10 Office in the name of the Class Member.

11 b. If any Aggrieved Employee's check is not cashed within the time periods
12 noted above, the check will be void and a stop-payment will be issued, and the Settlement
13 Administrator shall issue the unclaimed funds to the California State Controller's Office in the
14 name of the Aggrieved Employee.

15 **I. Duties of the Parties Prior to the Court's Approval**

16 74. Promptly after execution of this Agreement, Plaintiffs will move the Court for
17 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
18 accomplishing the following:

19 (a) Scheduling the Final Approval Hearing on the issue of whether this
20 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
21 and a hearing on fees, costs and the Service Payments;

22 (b) Approving as to form and content the proposed Notice Packet;

23 (c) Directing the mailing of the Notice Packet by first class mail to the Class
24 Members;

25 (d) Preliminarily approving this Settlement;

26 (e) Preliminarily certifying the class for purposes of this Settlement; and

27 (f) Advising the LWDA of the proposed Settlement.

28 **J. Duties of the Parties Following Court's Final Approval**

1 75. In connection with the Final Approval Hearing provided for in this Agreement,
2 Class Counsel shall submit a proposed Final Approval Order:

3 (a) Approving the Settlement, adjudging the terms thereof to be fair,
4 reasonable and adequate, and directing consummation of its terms and provisions;

5 (b) Approving Class Counsel's application for an award of attorneys' fees and
6 reimbursement of litigation costs and expenses, the Service Payment to the Class
7 Representatives, and the payment to the Settlement Administrator for costs of administering the
8 settlement; and

9 (c) Entering judgment approving settlement. Pursuant to California Rules of
10 Court, Rule 3.771(b), the Settlement Administrator shall post on its website a copy of the
11 judgment for a period of 30 days from the date the Court signed the judgment.

12 **K. Voiding the Agreement**

13 76. If the Court fails or refuses to issue the Final Approval Order or fails to approve
14 any material condition of this Agreement which effects a fundamental change of the Settlement,
15 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
16 option of either Party.

17 77. If the Settlement is voided or fails for any reason, Plaintiffs and Defendants will
18 have no further obligations under the Settlement, including any obligation by Defendants to pay
19 the Settlement Amount, or any amounts that otherwise would have been owed under this
20 Settlement.

21 78. If the Settlement is voided or fails for any reason, any costs incurred by the
22 Settlement Administrator shall be borne equally by Defendants and Plaintiffs, unless otherwise
23 specified in this Agreement.

24 **L. Other Terms**

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

27 80. Parties' Authority. The signatories hereto represent that they are fully authorized
28 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

1 81. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
2 accomplish the terms of this Agreement, including but not limited to, execution of such
3 documents and to take such other action as may reasonably be necessary to implement the terms
4 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
5 contemplated by this Agreement and any other efforts that may become necessary by order of the
6 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
7 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
8 cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's
9 preliminary and final approval of the settlement, and the final entry of judgment. Class Counsel
10 shall provide Defense Counsel with copies of the Preliminary Approval Motion and Final
11 Approval Motion for review prior to the filing deadline.

12 82. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
13 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
14 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
15 cause of action or rights released and discharged by this Agreement.

16 83. No Admission. Defendants deny any and all liability to Plaintiffs and/or any Class
17 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
18 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
19 and compromise the matters at issue in the Complaint to avoid further substantial expense and
20 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
21 taken into account the uncertainty and risks inherent in litigation, and without conceding any
22 infirmity in the defenses that they have asserted or could assert against Plaintiffs, have
23 determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and
24 upon the terms and conditions set forth in this Agreement.

25 84. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
26 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
27 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
28 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this

1 Agreement with the intention of avoiding further disputes and litigation with the attendant
2 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
3 related documents such as the notices, and motions for preliminary and final approval, shall,
4 pursuant to California Evidence Code § 1152 and/or Federal Rule of Evidence 408, be
5 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
6 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
7 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
8 approved, the stipulation will be of no force or effect.

9 85. No Publicity. The Parties will not publicize the Settlement or disclose it to third
10 parties prior to the Court granting Preliminary Approval, except as required or necessary to
11 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
12 Class Representatives agree that they will not discuss the Settlement with the media, any
13 settlement and verdict reporting service, any social media postings or other Internet postings.
14 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
15 other case materials in the Action related to seeking and obtaining Court approval of this
16 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
17 Members or their representatives about this Settlement, including through the posting of Court-
18 filed documents on Class Counsel's websites for access solely by the Class Members, or to
19 prevent the Parties or their representatives from communicating with financial or legal advisors
20 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
21 the Action has been settled on terms mutually agreeable to the Parties.

22 86. Notices. Unless otherwise specifically provided herein, all notices, demands or
23 other communications given hereunder shall be in writing and shall be deemed to have been duly
24 given as of the third business day after mailing by United States registered or certified mail,
25 return receipt requested, addressed:

26 *To the Class:*

27 Michael Nourmand, Esq.
 mnourmand@nourmandlawfirm.com
28 James De Sario, Esq.
 jdesario@nourmandlawfirm.com

1 The Nourmand Law Firm, APC
2 8822 West Olympic Boulevard
3 Beverly Hills, California 90211
4 Tel: (310) 553-3600 | Fax: (310) 553-3603

5 *To Defendants:*

6 Nicole M. Shaffer, Esq.
7 *Nicole.Shaffer@jacksonlewis.com*
8 Jackson Lewis P.C.
9 3390 University Avenue, Suite 110
10 Riverside, CA 92501
11 Tel: (951) 848-7940 | Fax: (951) 848-0009

12 87. Construction. The Parties hereto agree that the terms and conditions of this
13 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
14 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
15 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiffs
16 and Defendants expressly waive the common-law and statutory rule of construction that
17 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
18 and represent that the language in all parts of this Agreement shall be in all cases construed as a
19 whole, according to its fair meaning.

20 88. Captions and Interpretations. Paragraph titles or captions contained herein are
21 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
22 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
23 contractual and not merely a recital.

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

28 90. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
provide written notice to the other Party and allow an opportunity to cure the alleged
deficiencies, and Plaintiffs and Defendants may agree to seek the help of the Mediator to resolve
any dispute they are unable to resolve informally. During this period, the Parties shall bear their

own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiffs or Defendants.

91. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

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

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

94. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice Packet will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

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

Dated: 08/20/2024

PLAINTIFF AND CLASS REPRESENTATIVE



Jean P. Grammatico

Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

Michael A. Rojas

own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiffs or Defendants.

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

94. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice Packet will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

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

Dated: _____ PLAINTIFF AND CLASS REPRESENTATIVE

Jean P. Grammatico

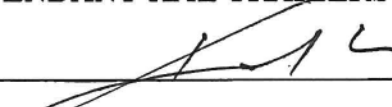
Dated: 09/19/2024 PLAINTIFF AND CLASS REPRESENTATIVE



Michael A. Rojas

1 Dated: 10-17-2024

2 **DEFENDANT KAL TRAILERS & LEASING INC.**

3 
4 By: KALVINDER SINGH

5 Title: PRESIDENT

6 Dated: 10-17-2024

7 **DEFENDANT KAL PARTZ INC.**

8 
9 By: KALVINDER SINGH

10 Title: PRESIDENT

11 Dated: 10-17-2024

12 **DEFENDANT KAL FRIEGHT INC.**

13 
14 By: KALVINDER SINGH

15 Title: PRESIDENT

16 Dated: 10-17-2024

17 **DEFENDANT KVL TIRES INC.**

18 
19 By: KALVINDER SINGH

20 Title: PRESIDENT

21 **APPROVED AS TO FORM:**

22 Dated: 08/20/2024

23 **CLASS COUNSEL**
24 **THE NOURMAND LAW FIRM, APC**

25 James De Sario
26 Michael Nourmand, Esq.
27 James A. De Sario, Esq.
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1 Dated: 10/22/2024

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