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Attorneys for Plaintiff DYLON W. CRONON, individually and
On behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

DYLON W. CRONON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FFE TRANSPORTATION SERVICES, INC.
dba FROZEN FOOD EXPRESS, a Delaware
Corporation and DOES 1-50, inclusive,

Defendant.

CASE NO.: STK-CV-UOE-2022-6572
DEPT: 10C
JUDGE: HON. JAYNE LEE

**DECLARATION OF JAMES HAWKINS
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
SETTLEMENT**

Date: February 20, 2024
Time: 09:00 a.m.
Dept.: 10C

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1 Code §17200 et seq. Plaintiff also alleges related claims under PAGA in a separate lawsuit.

2 5. Defendant retained counsel and, on October 19, 2022, Defendant removed the
3 Class Action to the United States District Court for the Eastern District of California. Defendant
4 then filed a motion to compel arbitration and to dismiss the class claims, but the Parties stayed all
5 motion practice pending the completion of mediation and agreed that any settlement reached at
6 mediation would include a stipulation to remand the Class Action to state court. Defendant filed
7 an answer to the PAGA lawsuit, and the parties stipulated to stay proceedings pending mediation
8 of the Class and PAGA Action. In preparation for the mediation, the Parties informally
9 exchanged documents and information that allowed both sides to calculate the potential damages
10 and evaluate potential risk, including policies and procedures pertaining to each claim alleged,
11 and statistics relating to the number of current and former employees, number of shifts, pay
12 periods worked and other things. In this regard, Defendant provided a random 10% sampling of
13 timekeeping and payroll records of the 266 Class Members. This sampling of 27 employees'
14 records enabled both parties to take a deep dive into the claims. Additionally, during this
15 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
16 including matters related to the calculation of damages, trial, and appellate issues and risks.

17 6. On May 11, 2023, Plaintiff and Defendant FFE participated in mediation before
18 Honorable William Pate, a retired Judge who served in the San Diego Superior Court Civil
19 Department and now serves as mediator on wage and hour class action cases among other matters.
20 The matter resolved pursuant to a mediator's proposal. The Parties accepted the mediator's
21 proposal and memorialized the terms of the settlement in a long-form Settlement Agreement.

22 7. In summary, Plaintiff's Counsel performed a thorough investigation into the
23 claims at issue, which included: (1) determining Plaintiff's suitability as private attorneys general
24 and class representative through interviews, background investigations, and analyses of
25 employment files and related records; (2) evaluating all of Plaintiff's potential representative
26 claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of
27 the positions, and the type of employer; (4) analyzing employees' time and wage records and
28 driver manifest; (5) reviewing Defendant's employment policies and practices; (6) researching

1 settlements in similar cases and the prior settlement in this case; (7) evaluating Plaintiff's claims
2 and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief;
3 and (9) participating in the mediation.

4 **Mediation**

5 8. As a result of the mediation, the parties agreed to settle this matter for a Gross
6 Settlement Amount ("GSA") of \$475,000.00. Based on their own respective independent
7 investigations and evaluations, and after taking into account the sharply disputed factual and legal
8 issues involved in this matter, the risks attending further prosecution of the case, and the
9 monetary benefits received under the Settlement despite the questionable nature of the claims,
10 Plaintiff's counsel is of the opinion that Settlement for the consideration and on the terms set
11 forth in the Settlement Agreement remains fair, reasonable and adequate and is in the best
12 interests of the Class Members.

13 9. Even without the presumption of fairness and reasonableness, the settlement is
14 clearly within the range of reasonableness as thoroughly discussed in detail in the motion for
15 preliminary approval, and as considered by the Court in granting preliminary approval

16 10. "Settlement Class" consists of all current and former non-exempt, non-driver
17 employees who were employed by Defendant in California at any time during the Class Period.
18 Defendant represents that there are approximately 266 eligible Class Members.

19 11. The settlement negotiations were hard-fought and conducted in good faith and at
20 arm's length between attorneys with substantial experience litigating class action and wage-and-
21 hour cases. The settlement was the product of a non-collusive settlement process. The final
22 settlement amount was reached as a result of reasonable compromises in light of these
23 considerations. The Parties entered into a long form Settlement Agreement which is now
24 presented for Court approval.

25 12. From Class Counsel's review of the facts, strengths, and weaknesses of the case,
26 the risks and delays posed by further litigation, and Class Counsel's own prior litigation
27 experience, Class Counsel believe that the recovery for each Settlement Class Member is fair and
28 reasonable taking into consideration the amounts received in other wage and hour class actions,

1 the risks inherent in litigation of this genre, and the reasonable.

2 13. Accounting for the risks of continued litigation and impediments to discovery,
3 Plaintiff determined that a settlement amounting to \$475,000.00 was fair and reasonable and the
4 court preliminarily agreed.

5 **The Claims**

6 14. Plaintiff contends that his strongest claim was for wage statement violations. As
7 such, the maximum potential damages under § 226(e) was \$340,000 for approximately 4,413 pay
8 periods in the wage statement period. But this maximum figure ignores several risks and defenses.
9 For example, Defendant raised many defenses, including that: (a) all required information under §
10 226(a) could be “easily ascertained” from the wage statements and thus there were no violations,
11 (b) the omissions, if any, were not “knowing and intentional” so no liability would attach, (c)
12 Plaintiff and the Class would be unable to show the requisite “injury” to impose liability, and (d)
13 even if there were violations, Defendant modified its wage statements during the liability period,
14 thus reducing the number of potential violations. These defenses all went to the merits, not to
15 defeating class certification. Thus, Plaintiff did not assign a risk at the class certification stage but
16 applied a 50% risk on the merits, resulting in risk-adjusted value for the wage statement claim of
17 \$170,000.

18 15. Plaintiff valued the meal period claim at \$258,744 but discounted this damage
19 based upon the apparent complaint policies and the potential for individual inquiry and reduced
20 this value to an approximately 50% for an estimated damage of \$129,372. The rest break claim
21 lacked little to no value as the policies in place appeared complaint and there was little to no
22 evidence of such violations common to the group.

23 16. Plaintiff then valued the various unpaid wage claims at approximately \$209,610.
24 The off the clock claim was valued at \$193,953 for approximately ½ hour of unpaid time per
25 workweek. The regular rate claim for sick pay was valued at \$11,568. The regular rate claim for
26 overtime was valued at \$4,089. However, Defendant raised a host of strong defenses both as to
27 class certification and on the merits. For instance, Defendant argued that it maintained a policy
28 which required the Class Members to keep accurate records for the beginning and end of the

1 workday, and that any “off-the-clock” claims would require exactly the type of individualized
2 assessments that preclude class certification. Because of these strong defenses and substantial risk
3 in continued litigation, Plaintiff assigned a 25% risk at class certification and another 25% risk on
4 the merits, leading to a risk-adjusted value for the wage claims of \$104,805.

5 17. These unpaid wage claims then gave rise to Plaintiff’s claim for waiting time
6 penalties, which had a maximum value of \$548,585 based on 183 *former* Class Members.
7 However, Defendant argued that it would defeat Plaintiff’s unpaid wage claims and, because the
8 waiting time penalty claims were derivative of the unpaid wages, Plaintiff’s Labor Code § 203
9 would fail. Additionally, Defendant argued that even if the Court determined that some or all
10 unpaid wage claims had merit, waiting time penalties would be inappropriate because any
11 violations were not “willful”, and Defendant had a “good faith” belief in the legality of its
12 practices. For these reasons, Plaintiff applied the same class certification and merits risks from
13 above (50%), leading to a risk-adjusted value for the § 203 claims of \$274,292.

14 18. As for Plaintiff’s claims under Labor Code § 2802 (failure to reimburse), Plaintiff
15 assigned a maximum value of \$97,500 based on \$30 unreimbursed monthly expenses (\$30 x 3,250
16 months in the class period). But these claims also faced strong defenses, as Defendant argued that
17 it reimbursed the Class Members for all expenses and that the Class Members were not required to
18 use cell phones for work purposes. Based on these defenses, Plaintiff assigned a 25% risk at class
19 certification and a 25% risk on the merits, leading to a risk-adjusted value of \$48,750.

20 19. The PAGA penalties were valued at approximately \$197,500 (3,952 pay periods X
21 \$50 per Pay Period). The \$50 per pay period was adjusted from the \$200 to account for the risks
22 discussed herein.

23 20. As discussed thoroughly in the motion for preliminary approval, the GSA is well
24 within the acceptable range of reasonableness for the claims of the Settlement Class Members.
25 After analysis and review of Defendant’s time and pay record production and other payroll data,
26 Class counsel estimates the overall value of the claims at approximately \$924,719.00 should
27 Plaintiff prevail at the class certification stage, trial, and survive any appeals and win on all claims
28 and be awarded maximum damages for all class members and certain assumptions and

1 extrapolations were confirmed with further discovery. This amount was reduced by a reasonable
2 50% to account for the risks of continued litigation and not prevailing on one or more claims and
3 the Court not awarding penalties based upon Defendant's good faith arguments.

4 21. As a result, the GSA of \$475,000.00 represents a reasonable recovery and
5 approximately 50% of the overall potential value. This recovery could easily be much
6 higher if at trial PAGA penalties were reduced or damages for certain pay periods or workweeks
7 could not be proven for certain individuals. The proposed GSA is within the "ballpark of
8 reasonableness" and should be approved. Counsel for Plaintiff believes that this is a fair and
9 reasonable Settlement in light of the complexities of the case, the state of the law and uncertainties
10 of class certification and litigation, the policies and practices Defendant has had in place or
11 implemented during the purported liability period, and the benefit to be recovered for the Class.
12 Given the risks inherent in litigation, this settlement is fair, adequate, and reasonable and is in the
13 best interests of the Settlement Class, and should be finally approved.

14 22. Based on the estimated Net Settlement Amount of \$232,666.67, on average each
15 Settlement Class Member with approximately \$874.68 per Class Member. The highest amount a
16 Settlement Class Member will receive is approximately \$4,472 based upon \$17.89 per workweek
17 multiplied by approximately 250 maximum workweeks during the Class Period. The lowest
18 payment is estimated to be approximately \$17.89 for someone who worked only one workweek.
19 To the extent any amount for Attorneys' Fees, Costs, Claims Administration Costs or Incentives
20 are not awarded, the difference in those amounts will be added to the NSA. This is a guaranteed
21 amount of money paid to Settlement Class Members now, rather than the continued risk of further
22 litigation and receiving no money sometime in the far future and after trial and appeals.

23 23. The PAGA members who worked during the PAGA period will be paid a PAGA
24 Payment based upon a pro rata share of the number of pay periods each PAGA member worked
25 compared to the total pay periods worked by all PAGA group members during the PAGA period
26 of approximately 3,952. As a result, there are approximately 79 PAGA members who will each
27 receive approximately \$158.22 per PAGA member.

28 24. I believe that the consideration and terms set forth in the Settlement Agreement is

1 fair, reasonable, and adequate and are in the best interests of the Settlement Class in light of all
2 known facts and circumstances, including the various defenses asserted by Defendant, and
3 numerous potential appellate issues. In addition, the prospect of a potential adverse summary
4 judgment ruling, as well as the uncertainty of class certification, the difficulties of complex
5 litigation, the lengthy process of establishing specific damages and various possible delays and
6 appeals, were also carefully considered in agreeing to the proposed Settlement.

7 25. Further, beyond the risk of an adverse ruling on the merits or certification, Class
8 Counsel considered the fact that continued litigation would likely take years and would be
9 extremely expensive given the breadth and complexity of the claims. In this case, post-trial and
10 appellate proceedings are likely to occur, which will surely drag the case far into the future even
11 with a positive trial result. When facing a distant and unsure resolution of the allegations in this
12 action, the swift, sure and substantial Settlement is all the more reasonable. Avoiding such costly
13 litigation in favor of more immediate benefits to the Class was a consideration favoring settlement.
14 Given these realities, it is highly likely that the future expense of this litigation, and its likely
15 duration if the settlement is not approved, would be significant and weigh heavily in favor of
16 approval of this settlement.

17 26. Given the risks inherent in litigation, this settlement is fair, adequate, and
18 reasonable and is in the best interests of the Settlement Class, and should be finally approved.

19 **Experience of Class Counsel**

20 27. My practice is limited exclusively to litigation, focusing on the representation of
21 employees in wage and hour and consumer class action matters. I have a great deal of experience
22 in wage and hour class action litigation. I have obtained certification of several classes, I have
23 been approved as class counsel in many other wage/hour class actions, and I am currently
24 litigating numerous others. Although not an all-inclusive list, over the years I have prosecuted the
25 following class action matters as lead and/or co-lead counsel, all of which implicated similar law
26 and facts to those associated with this action:

- 27 a. *Aguilar v. 7-Eleven, Inc.*, et. al., Orange County Superior Court- Case No.: 30-
28 2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium

1 wages for meal period and rest periods and resultant penalties. Case settled, Final
2 Approval granted, no objections and funds fully distributed.

3 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT- Case
4 No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for mis-
5 classification of insurance claims adjusters employed by Gallagher Bassett, a third
6 party administrator (TPA) in the State of California. Certification granted. Plaintiff's
7 counsel co-lead counsel. Case settled, Final Approval granted, no objections and funds
8 fully distributed.

9 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-
10 04554. Wage and Hour Class Action case seeking past wages for "off the clock",
11 overtime and meal and rest break violations for production workers in the State of
12 California. Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final
13 Approval granted, no objections and funds fully distributed.

14 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
15 Wage and Hour Class Action case seeking past wages for meal and rest period
16 violations for retail employees in the State of California. Plaintiff's counsel appointed
17 co-lead counsel. Case settled, Final Approval granted, no objections and funds fully
18 distributed.

19 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
20 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and
21 rest period violations for retail employees in the State of California. Plaintiff's
22 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no
23 objections and funds fully distributed.

24 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
25 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past
26 wages for overtime, meal and rest break violations for driver employees in the State of
27 California. Settlement for "binding arbitration." Arbitration Award for Plaintiff Class.
28 Arbitration Award confirmed. Plaintiff's counsel, lead trial counsel and class counsel.

1 Case settled, Final Approval granted, no objections and funds fully distributed.

2 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior

3 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for

4 overtime, meal and rest breaks violations for production employees in the State of

5 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval

6 granted, no objections and funds fully distributed.

7 h. *Acosta v. Fleetwood Travel Trailers of California, Inc.*, et al., Riverside County

8 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past

9 wages for overtime, meal and rest break violations for production employees in the

10 State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled,

11 Final Approval granted, no objections and funds fully distributed.

12 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.

13 Wage and Hour Class Action seeking past wages for unlawful deductions, meal and

14 rest break violations for restaurant employees in the State of California. Plaintiff's

15 counsel appointed as lead counsel. Case settled, Final Approval granted and funds

16 fully distributed.

17 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case

18 No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal

19 and rest break violations for security officers in the State of California. Plaintiff's

20 counsel appointed as co-lead counsel. Case settled, Final Approval granted, no

21 objections and funds fully distributed.

22 k. *Martinez v. Securitas Security Services USA*, et al., Santa Clara Superior Court,

23 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action

24 seeking past wages for meal and rest break violations for security officers employed by

25 Defendant in the State of California. Plaintiff's counsel and co-counsel. Case settled,

26 Final Approval granted and funds fully distributed.

27 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc.* et al., Riverside Superior Court,

28 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime,

1 meal and rest break violations for housekeepers employed by Defendant in the State of
2 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval
3 granted, no objections and funds fully distributed.

4 m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
5 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and
6 rest period violations for non-exempt employees employed by Defendant in the state of
7 California. Case settled. Final Approval granted, no objections and funds fully
8 distributed.

9 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
10 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages
11 for field and branch employees of Defendant in the State of California. Plaintiff's
12 counsel appointed as lead counsel. Case settled, Final Approval granted, no objections
13 and funds fully distributed.

14 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
15 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
16 employees of Defendant in the State of California. Plaintiff's counsel appointed as
17 lead counsel. Case settled, Final Approval granted, no objections and funds fully
18 distributed.

19 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
20 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
21 break violations for security guards employed by Defendant in the State of California.
22 Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no
23 objections and funds fully distributed.

24 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
25 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and
26 rest break violations for production employees employed by Defendant in the State of
27 California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval
28 granted, no objections and funds fully distributed.

1 r. *McMurray v. Dave and Busters, Inc.*, et al., Orange County Superior Court, Case
2 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest
3 break violations for restaurant employees employed by Defendant in the State of
4 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
5 Approval granted, no objections and funds fully distributed.

6 s. *Osuna v. DFG Restaurants, Inc.*, et al., Los Angeles Superior Court, Case No. BC
7 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
8 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of
9 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
10 Approval granted, no objections and funds fully distributed.

11 t. *Burns v. Gymboree Operations, Inc.*, et al., San Francisco Superior Court, Case No.
12 CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest
13 break violations for retail employees employed by Defendant in the State of California.
14 Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no
15 objections and funds fully distributed.

16 u. *Willems v. Diedrich Coffee, Inc.*, et al., Orange County Superior Court, Case No.
17 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-
18 classification of managers employed by Defendant in the State of California.
19 Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no
20 objections and funds fully distributed.

21 v. *Davila, et al. v. Beckman Coulter, Inc.*, et al., Orange County Superior Court, Case
22 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal
23 and rest break violations for production workers employed by Defendant in the State of
24 California. Plaintiff's counsel appointed lead counsel. Case settled; final approval
25 granted; no objections and funds fully distributed.

26 w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court,
27 Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime,
28 meal and rest period violations for production employees employed by Defendant in

the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

Reasonableness of Attorneys' Fees

28. Here, the Parties' agreement to pay Class Counsel Fees of \$158,333.33 (33.33% of the GSA) is reasonable. My firm has been the only counsel to represent Plaintiff and the Settlement Class in this matter, and we have borne the entire risk and cost of this litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my experience and the extensive review and analysis of documents and information by me and others at my firm. In a complex action such as this, the proposed attorneys' fees are, at the very least, on the low side of the market rate for contingency fees.

29. A review of my firm's detailed billing system reveals that to date, my firm as Class Counsel, on behalf of Plaintiff and the Settlement Class, invested approximately 224.40 hours litigating this matter through the date of this declaration for a total lodestar of **\$177,675** in fees. The lodestar fees are broken down as follows:

Name and Title of Professional	Hours	Rate (2023/2024)	Lodestar
James Hawkins (Attorney)	76.70	\$950	\$80,535.00
Gregory Mauro (Attorney)	104.00	\$850	\$88,400.00
Melissa Whitson (Legal Assistant)	43.70	\$200	\$8,740.00
TOTAL HOURS AND LODESTAR FOR JAMES HAWKINS APLC	224.40		\$177,675.00

30. In addition to the requested attorneys' fees, our office has expended a total of **\$14,060.17** in costs in prosecuting this action. These costs have been necessary costs associated with prosecution of this important matter. Counsel for Plaintiff respectfully requests the Court grant the request to have these costs repaid from the Settlement. Attached as **Exhibit C** is a true and correct copy of Class Counsel James Hawkins costs bill.

31. Despite the complexity of the case, Class Counsel has, through the investment of

1 substantial effort and the resources of my law firm been able to secure an outstanding settlement
2 on behalf of the Settlement Class. Plaintiff would have faced substantial legal and factual
3 obstacles in demonstrating that class certification was appropriate. Plaintiff would also have been
4 required to establish a significant amount of witness testimony, pattern and practice evidence,
5 statistical evidence, sampling evidence, expert testimony, and other evidence in order to present
6 their case both at the class certification stage and trial. Defendant has vigorously contested
7 liability, the amount of claimed damages, and the propriety of class certification, and would have
8 continued to do so through trial. Accordingly, I believe the Settlement to be fair, reasonable, and
9 adequate and in the best interests of the Settlement Class. The fairness and adequacy of the
10 Settlement is confirmed by all known facts and circumstances, including the risk of significant
11 delay and uncertainty associated with litigation, the various defenses asserted by Defendant, and
12 numerous potential appellate issues.

13 **Reasonableness of the Class Representative Enhancement Payment**

14 32. The parties request payment of a Class Representative Enhancement Payment from
15 the non-reversionary Gross Settlement Amount to the Class Representative in the amount of
16 \$7,500.00 in addition to the payment he is otherwise entitled to receive as a Class Member. The
17 proposed Class Representative Enhancement Payment is reasonable compensation given the time
18 and effort that the named Plaintiff devoted to this case; the valuable assistance they provided to
19 Class Counsel; and the fact that they entered into a general release of claims that is broader than
20 the release of the Class.

21 33. Plaintiff provided invaluable assistance to Class Counsel and the Class in this case,
22 including providing factual background for the Class Complaint; reviewing the relevant
23 documents, and Complaint; having their depositions taken; participating in phone calls with their
24 lawyers to discuss litigation and settlement strategy; and reviewing the settlement documents.
25 Plaintiff agreed to participate in this case with no guarantee of personal benefit. Attached hereto as
26 **Exhibit D** is a true and correct copy of the declaration of Plaintiff Cronon.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on
January 24, 2024 at Irvine, California.


James R. Hawkins

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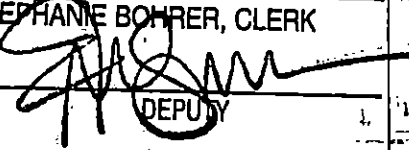
Exhibit A

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SEP 12 2023

and

Filed
STEPHANIE BOHRER, CLERK

By 
DEPUTY

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James R. Hawkins, Esq. (#192925)
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9 Attorneys for Plaintiff DYLON W. CRONON
10 individually and on behalf of all others similarly situated.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN JOAQUIN**

13 DYLON W. CRONON, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 FFE TRANSPORTATION SERVICES, INC.
18 dba FROZEN FOOD EXPRESS, a Delaware
Corporation and DOES 1-50, inclusive,

19 Defendants.
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CASE NO.: STK-CV-UOE-2022-0006572
DEPT: 10C
JUDGE: HON. JAYNE LEE

~~PROPOSED~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: 9/12/23
Time: 9:00 AM
Dept.: 10C

FILED



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ORDER

This matter came on for hearing on _____ 2023 at _____ a.m. in Department 10C of the above-captioned court on the Motion for Preliminary Approval of Class Action Settlement, upon the terms and conditions set forth in the Stipulation for Class Action Settlement (hereinafter "Settlement Agreement").

The Court, having fully reviewed the Motion for Preliminary Approval of Class Action Settlement, the Memorandum of Points and Authorities and Declarations filed in support thereof, the Settlement Agreement, including the proposed Notice of Proposed Settlement Class Action Settlement, and in recognition of the Court's duty to make a preliminary determination as to the reasonableness of any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure proper notice is provided to Settlement Class Members in accordance with due process requirements, and to set a Final Approval Hearing to consider the proposed Settlement Agreement as to the good faith, fairness, adequacy and reasonableness of any proposed settlement, and having heard the argument of Counsel for the respective parties, the Court **HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:**

It appears to the Court on a preliminary basis that the Gross Settlement Amount ("GSA") is fair and reasonable to the Class Members when balanced against the probable outcome of further litigation relating to class certification, the liability and damages issues involved, and the potential for appeals. It further appears that sufficient investigation, research, and litigation has been conducted such that counsel for the Parties at this time is able to reasonably evaluate their respective positions. It further appears that the Settlement at this time will avoid substantial costs, delay and risks that would be presented by the further prosecution of the litigation. It further appears that the proposed Settlement has been reached as the result of intensive, serious and non-collusive negotiations between the Parties. **ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS HEREBY GRANTED, AND AS A PART OF SAID PRELIMINARY APPROVAL, THE COURT HEREBY ORDERS THAT THE SETTLEMENT CLASS BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY, AND THAT JAMES HAWKINS, APLC BE**

1 CONDITIONALLY AND PRELIMINARILY APPOINTED CLASS COUNSEL. MORE
2 SPECIFICALLY, THE COURT FINDS AS FOLLOWS:

3 The Court finds on a preliminary basis that the Settlement between Plaintiff and Defendant
4 appear to be within the range of reasonableness of a settlement which could ultimately be given final
5 approval by this Court. The Court preliminarily finds that the terms of the Settlement are fair,
6 reasonable, and adequate, pursuant to Section 382 of the California Code of Civil Procedure.

7 The Court notes that Defendants have agreed to a non-reversionary GSA of \$475,000.00.
8 Defendant will pay out the entirety of the GSA to the Participating Class Members and PAGA
9 Settlement Group Members, less deductions for attorneys' fees and costs, the service payment,
10 reasonable expenses of the third-party Settlement Administrator, and the LWDA for PAGA
11 penalties.

12 The Court finds that the elements of numerosity, commonality, typicality and adequacy have
13 been established to support conditional certification of the Settlement Class for settlement purposes,
14 with Plaintiff acting as the Class Representative.

15 The Court hereby appoints, for settlement purposes, Plaintiff Dylon W. Cronon as the Class
16 Representative and finds Plaintiff is an adequate representative for the Settlement Class for
17 settlement purposes. The Court further finds that James Hawkins APLC has preliminarily
18 established adequacy to be appointed as Class Counsel and appoints them as Class Counsel.

19 The Class as identified in the Settlement is provisionally certified by this Order.

20 The Court finds that the proposed manner of class notice is adequate.

21 The Court approves APEX Class Action Settlement Administration to serve as the
22 Settlement Administrator.

23 The Court further hereby approves the proposed Notice of Class Action Settlement and
24 Orders to the notice to be mailed to the Settlement Class.

25 The Court finds that the Notice of Class Action Settlement constitutes the best notice
26 practicable under the circumstances, is in full compliance with the laws of the State of California
27 and, to the extent applicable, the United States Constitution and the requirements of due process.
28 The Court further finds that the Notice of Class Action Settlement fully and accurately informs

1 Settlement Class Members of all material elements of the proposed Settlement, of each Settlement
2 Class Member's right to be excluded from the Settlement Class, and each Settlement Class Member's
3 right and opportunity to object to the proposed Settlement. The Notice of Class Action Settlement
4 adequately advises the Class about: the Class Action; the terms of the proposed Settlement and the
5 benefits available to each Settlement Class Member; each Settlement Class Member's right to
6 participate, submit an exclusion/Opt-Out, or Objection to the proposed Settlement, and the timing
7 and procedures for doing so; the temporary and conditional certification of the Settlement Class for
8 settlement purposes only; preliminary Court approval of the proposed Settlement; timing and
9 procedures for distributing the Gross Settlement and the Individual Settlement Payments to the
10 Participating Class Members; and the date of the Final Approval Hearing as well as the rights of the
11 Settlement Class to file documentation in support of or in opposition to and appear in connection
12 with said hearing.

13 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES
14 THE PROPOSED CLASS NOTICE PACKET TO THE CLASS AND FINDS that mailing to the
15 last known address of the Settlement Class, as specifically described within the Settlement
16 Agreement, constitutes an effective method of notifying Settlement Class Members of their rights
17 with respect to the proposed Settlement. ACCORDINGLY, IT IS HEREBY ORDERED that:

18 Within 14 calendar days after entry of the Preliminary Approval Order, Defendant shall
19 provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a
20 check of the Class Members' addresses against those on file with the U.S. Postal Service's
21 National Change of Address Database. The Class Data provided to the Settlement Administrator
22 will remain confidential, shall be used solely to administer the Settlement, and it will not be used
23 or disclosed to anyone but Class Counsel pursuant to a Stipulated Protective order, except as
24 required by applicable tax authorities, pursuant to Defendant's express written consent, or by order
25 of the Court. Nothing herein shall prevent Class Counsel from communicating with Class
26 Members regarding the Action and Settlement. The Settlement Administrator will be required to
27 sign and provide to Defendant a Certification Regarding Confidential Discovery Materials and to
28 be bound by a Stipulated Protective Order as entered by the Court. The Settlement Administrator

1 shall use due care with respect to the storage, custody, use, and/or dissemination of the
2 confidential information. Such information must be stored in a secure fashion and all persons who
3 access the data must agree to keep it confidential.

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

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

18 IT IS FURTHER ORDERED Class Members are deemed to participate in the Settlement,
19 unless they timely opt-out, and Aggrieved Employees may not opt out of the PAGA Released
20 Claims. The Notice will inform Class Members of his/her estimated Individual Settlement Payment
21 and the number of Pay Periods Worked during the Class Period and during the PAGA Period. Class
22 Members may dispute their Pay Periods Worked if they feel they should be credited with more
23 Eligible Pay Periods than Defendant's records show by timely submitting evidence to the Settlement
24 Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut
25 Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the
26 Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree
27 to meet and confer in good faith about the evidence to determine the Class Member's actual number
28 of Pay Periods Worked and estimated Individual Settlement Payment. If Class Counsel and Defense

1 Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to
2 render a final decision. Class Members will have until the Notice Response Deadline to dispute Pay
3 Periods Worked, object or opt out, unless extended by the Court. In the event that the Settlement
4 Administrator increases the number of Pay Periods Worked for any Settlement Class Member, then
5 the Settlement Administrator will recalculate the Participating Class Members' Individual
6 Settlement Payments; accordingly, in no event will Defendant be required to increase the Gross
7 Settlement Amount.

8 IT IS FURTHER ORDERED the Settlement Administrator shall provide counsel for the
9 Parties, at least twenty-five (25) calendar days prior to the final approval hearing, a declaration of
10 due diligence and proof of mailing with regard to the mailing of the Notices of Settlement.

11 IT IS FURTHER ORDERED that each Settlement Class Member will be fully advised of
12 the Settlement, the ability to object to the provisions in the Settlement related to the Released Class
13 Claims, and the ability to opt-out or request exclusion from the Settlement with respect to the
14 Released Class Claims. The Notice will inform the Settlement Class Members of the Court-
15 established deadlines for filing objections or requesting exclusion from the Settlement with respect
16 to the Released Class Claims in accordance with the following guidelines:

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

21 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
22 CLASS IN THE FFE LAWSUIT. I UNDERSTAND THAT IF I
23 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
24 RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

25 To be valid, any Request for Exclusion must include the full name, address, telephone
26 number, last four digits of the social security number or date of birth, and signature of the Settlement
27 Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the
28 Settlement Administrator at the specified address set forth in the Notice. Any such Request must be

1 made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely
2 only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
3 Any Settlement Class Member who timely requests exclusion in compliance with these
4 requirements: (i) will not have any rights under this Agreement with respect to the Released Class
5 Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled
6 to receive any payments under this Agreement for the Released Class Claims; and (iii) will not be
7 bound by this Agreement, or the Judgment, with respect to the Released Class Claims. Any
8 Aggrieved Employee who requests timely exclusion will still be subject to the PAGA Released
9 Claims to the fullest extent permitted by law and shall be sent his or her share of PAGA Penalties.

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

16 (c) Any Settlement Class Member, other than Plaintiff, may object to the terms
17 of this Agreement, except as to the PAGA Released Claims. To object, a Settlement Class Member
18 shall inform the Settlement Administrator, in writing, at least 10 calendar days before the Final
19 Approval Hearing, of his or her objection which must be postmarked by the Notice Response
20 Deadline at the address set forth in the Notice. Such objection shall include the objecting Settlement
21 Class Member's full name, address, telephone number, last four digits of the social security number
22 or date of birth, signature, and dates of employment with Defendant, in addition to the case name
23 and number, the basis for the objection, including any legal support and each specific reason in
24 support of the objection, as well as any documentation or evidence in support thereof, and, if the
25 Objecting Settlement Class Member is represented by counsel, the name and address of his or her
26 counsel. The Settlement Administrator shall provide objections, if any, to Class Counsel and
27 Defense Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall
28 attach the same to its declaration of due diligence and file with the Court prior to the Final Approval

1 Hearing. Any Participating Class Member who files an objection remains eligible to receive
2 monetary compensation from the Settlement. Plaintiff and Defendant shall not be responsible for
3 any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any
4 objections to the Settlement. Submitting an objection does not preserve the right to appeal a final
5 judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and
6 properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure
7 Section 663. Settlement Class Members and Aggrieved Employees may not object to or opt-out of
8 the Settlement with respect to the PAGA Released Claims.

9 (d) Any Settlement Class Member who desires to object to the Released Class
10 Claims in the Settlement but fails to timely submit a written objection waives any right to object and
11 will be foreclosed from making any objection to this Settlement. Any Settlement Class Member
12 who does not timely and properly become a party of record by intervening or filing a motion to
13 vacate the judgment waives any and all rights to appeal from the Judgment, including all rights to
14 any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment,
15 motion for new trial, a motion under California Code of Civil Procedure Section 473, and
16 extraordinary writs.

17 (e) Counsel for the Parties may file a response to any objections submitted by
18 objecting Settlement Class Members at least five (5) court days before the date of the Final Approval
19 Hearing.

20 (f) Settlement Class Members will have until the Notice Response Deadline to
21 object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
22 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
23 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request
24 of Class Counsel or Defense Counsel.

25 (g) If a Settlement Class Member's Request for Exclusion or objection is
26 defective as to the requirements listed herein, that Settlement Class Member will be given an
27 opportunity to cure the defect(s). The Settlement Administrator will mail the Settlement Class
28 Member a cure letter within three (3) business days of receiving the defective submission to advise

1 the Settlement Class Member that his or her submission is defective and that the defect must be
2 cured to render the Request for Exclusion or objection valid. The Settlement Class Member will
3 have the later of (i) the Notice Response Deadline or (ii) 15 calendar days from the date of the cure
4 letter to postmark or fax a revised Request for Exclusion or objection. If the revised Request for
5 Exclusion or objection is not postmarked or received by fax within that period, it will be deemed
6 untimely and disregarded.

7 IT IS FURTHER ORDERED that any disputes not resolved by the Settlement Administrator
8 concerning the administration of the Settlement will be resolved by the Court under the laws of the
9 State of California. Prior to any such involvement of the Court, counsel for the Parties will confer
10 in good faith to attempt to resolve the dispute without involving the Court.

11 IT IS FURTHER ORDERED that the Final Approval Hearing shall be held on 2/20
12 2024 at 9:00 a.m./p.m. in Department 10C of the above captioned Courthouse to consider the
13 fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this
14 Order Granting Preliminary Approval, and to consider the application of Class Counsel for an award
15 of attorneys' fees, costs, and class representative enhancement. The Court may continue the Final
16 Approval Hearing to another date at its discretion.

17 IT IS FURTHER ORDERED that all briefs and materials in support of an Order Granting
18 Final Approval and application for attorneys' fees and costs and class representative enhancement
19 shall be filed with this Court no later than sixteen (16) court days before the date set for the Final
20 Approval Hearing.

21 IT IS FURTHER ORDERED that, if for any reason the Court does not execute and file an
22 Order Granting Final Approval and Judgment, or if the Effective Date does not occur for any reason
23 whatsoever, the Settlement Agreement and the proposed Settlement which is the subject of this
24 Order and all evidence and proceedings had in connection therewith shall be without prejudice to
25 the status quo ante rights of the Parties to the litigation as more specifically set forth in the Settlement
26 Agreement.

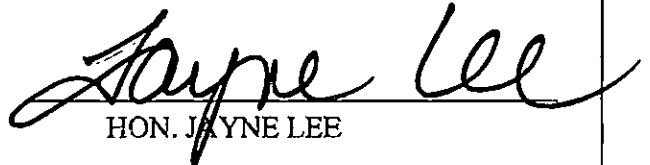
27 IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in
28 this matter except those contemplated herein and in the Settlement Agreement are stayed.

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The Court expressly reserves the right to adjourn or continue the Final Fairness Approval
Hearing from time to time without further notice to the Class.

IT IS SO ORDERED.

Dated: 9/12, 2023



HON. JAYNE LEE

JUDGE OF THE SUPERIOR COURT

Jayne C. Lee

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Exhibit B

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Attorneys for Defendant FFE Transportation Services, Inc.
dba Frozen Food Express, a Delaware corporation

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

DYLAN W. CRONON, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

FFE TRANSPORTATION SERVICES,
INC. dba FROZEN FOOD EXPRESS, a
Delaware Corporation and DOES 1-50,
inclusive,

Defendants.

CASE NO.:STK-CV-UOE-2022-6572
Dept: 10C
Judge: Hon. Jayne Lee
Action Date: July 29, 2022

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

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Dylan W. Cronon ("Plaintiff"), individually and on behalf of all others
3 similarly situated, and Defendant FFE Transportation Services, Inc., dba Frozen Food Express
4 ("Defendant") (collectively, the "Parties"), and is approved by their respective counsel of record,
5 subject to the terms and conditions hereof and the Court's approval.

6 **A. Definitions**

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

9 1. "Action" or "Lawsuit" means and refers to the class case entitled *Dylon Cronon v.*
10 *FFE Transportation Services, Inc., dba Frozen Food Express, et al.*, San Joaquin County
11 Superior Court, Case No.: 2:22-cv-01863-TLN-AC, which was removed to the Eastern District
12 of California, Case No.: 2:22-cv-01863-TLN-AC and subsequently remanded for settlement
13 purposes. The "Action" or "Lawsuit" also refers to the PAGA lawsuit entitled *Dylon Cronon v.*
14 *FFE Transportation Services, Inc. dba Frozen Food Express, et al.*, filed in San Joaquin County
15 Superior Court, Case No.: STK-CV-UOE-2022-8978. The class case and PAGA lawsuit are
16 collectively referred as the "Action" or "Lawsuit" unless specified otherwise.

17 2. "Agreement" or "Settlement Agreement" shall mean this Class Action Settlement
18 Agreement and Release of Claims.

19 3. "Aggrieved Employees" means all current and former non-exempt, non-driver
20 employees who were employed by Defendant in California at any time during the PAGA Period.

21 4. "Class Counsel" refers to James R. Hawkins and Gregory Mauro of JAMES
22 HAWKINS APLC.

23 5. "Class Data" means a complete list that Defendant will diligently and in good
24 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
25 and shall include the Settlement Class Members' full names; last known addresses; Social
26 Security Numbers; the dates of employment and total Pay Periods Worked during the PAGA
27 Period for each Aggrieved Employee, and the total Pay Periods Worked during the Class Period
28 for each Settlement Class Member.

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1 6. “Class Period” is deemed to be any time during the period of July 29, 2018,
2 through the Preliminary Approval Date or August 10, 2023, whichever is earlier.

3 7. “Class Representative” or “Plaintiff” means and refers to Dylan Cronon.

4 8. “Complaint” refers to the operative complaint in the Action, alleging Class Claims
5 and representative PAGA Claims.

6 9. “Court” (or “Judge”) means the California Superior Court, County of San
7 Joaquin.

8 10. “Defendant” means and refers to FFE Transportation Services, Inc.

9 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to Dessi N. Day
10 and Green & Roberts LLP.

11 12. “Effective Date”: The terms of settlement embodied in this Settlement shall
12 become effective when all of the following events have occurred: (i) this Settlement
13 Agreement has been executed by all Parties and their respective counsel; (ii) the Court has given
14 preliminary approval to the Settlement Agreement; (iii) the Notice has been given to the class,
15 providing them with an opportunity to dispute information contained in the Notice, to opt out of
16 the Settlement Agreement, or to object to the Settlement Agreement; (iv) the Court has held a
17 final approval hearing and entered a final order and judgment certifying the Class and approving
18 this Settlement; and (v) the later of the following events: (a) the date final approval is granted if
19 there are no objections to the settlement; (b) sixty-five (65) days following notice of entry of the
20 Court’s final order approving the Settlement Agreement if there are any objections by any Class
21 Member; or (c) if any appeal, writ or other appellate proceeding opposing this Settlement has
22 been filed within sixty-five (65) days following notice of entry of the Court’s final order
23 approving the Settlement, then twenty (20) days after when any appeal, writ or other appellate
24 proceeding opposing the Settlement Agreement has been resolved finally and conclusively with
25 no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that
26 the Settlement Agreement shall not become effective until the Court’s order approving the
27 Settlement is completely final, and there is no further recourse by an appellant or objector who
28 seeks to contest the Settlement.

1 13. “Final Approval” refers to the order of the Court granting final approval of this
2 Settlement Agreement and entering a judgment approving this Agreement on substantially the
3 terms provided herein or as the same may be modified by subsequent agreement of the Parties.

4 14. “Final Settlement Class” means, collectively, all Settlement Class Members who
5 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

6 15. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph
7 49(a) below.

8 16. “Individual Settlement Payment(s)” shall have the meaning ascribed to it in
9 Paragraph 49(c) below.

10 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
11 below.

12 18. “Notice” means the notice of settlement of class action that will be sent to the
13 Settlement Class Members.

14 19. “Notice Response Deadline” is 30 calendar days from the date the Notice is
15 mailed to the Settlement Class Members.

16 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
17 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
18 respect to the Released Class Claims, pursuant to Paragraph 72(c) below.

19 21. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
20 Labor and Workforce Development Agency (“LWDA”) in connection with the release of claims
21 asserted in this action under California Labor Code Private Attorneys General Act of 2004 (Cal.
22 Lab. Code §§ 2698, et seq., “PAGA”), as well as the individual PAGA payment allocated to each
23 Aggrieved Employee, as set forth further below in Paragraph 49(h).

24 22. “PAGA Period” is deemed to be any time during the period of October 5, 2021,
25 through the Preliminary Approval Date or August 10, 2023, whichever is earlier.

26 23. “PAGA Released Claims” or “PAGA Claims” by the Aggrieved Employees upon
27 Final Approval of the Settlement means all PAGA claims that Plaintiff alleged or could have
28 alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of
California, based on the facts and/or theories stated in the operative complaint and/or in
Plaintiff’s notice letter to the LWDA, including all PAGA claims seeking civil penalties
premised upon: a) failure to pay overtime wages, (b) failure to provide meal periods, (c) failure

1 to provide rest periods, (d) failure to pay all wages earned and owed upon separation, (e) failure
2 to pay all wages earned and owed during employment, (f) failure to provide accurate itemized
3 wage statements, (g) failure to reimburse necessary business expenses, (h) failure to pay vesting
4 vacation pay, (i) failure to pay reporting time pay, and (j) all other claims for civil penalties
5 recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the
6 facts or claims alleged in the operative complaint.

7 24. “Participating Class Member” means any and all Settlement Class Members who
8 are deemed to participate, who will receive an Individual Settlement Payment, and who do not
9 opt-out by submitting a timely, valid Request for Exclusion.

10 25. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and
11 Defendant, collectively.

12 26. “Pay Periods Worked” or “Eligible Pay Periods,” in the context of Settlement
13 Class Members, means all pay periods during the Class Period in which the Settlement Class
14 Member was employed by Defendant as a non-exempt, non-driver employee in California.
15 Likewise, in the context of Aggrieved Employees, these phrases mean all pay periods during the
16 PAGA Period in which the Aggrieved Employee was employed by Defendant as a non-exempt,
17 non-driver employee in California.

18 27. “Preliminary Approval Date” means the date the Court approves the Settlement
19 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

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

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

30. “Released Class Claims” or “Class Claims” by the Participating Class Members upon Final Approval of the Settlement will include the following claims for the entire Class Period:

(a) any and all claims, wages, penalties, interest, debts, demands, rights, liabilities, costs, compensation, damages, injunctive and/or declaratory relief, attorneys’ fees, actions, and/or causes of action that were pleaded or could have been pleaded based upon the factual allegations set forth by Plaintiff in the Complaint filed in this Action and arising at any time during the Class Period, including but not limited to all claims under the California Labor Code for unpaid minimum wages, off-the-clock work violations, failure to provide meal periods, failure to provide rest periods, unreimbursed business expenses, wage statement violations, interest, penalties, and attorneys’ fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including Labor Code §§ 200-204, 208, 210, 216, 218.6, 226, 226.3 , 226.7, 227.3, 510, 512, 512.5, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Industrial Welfare Commission Occupational Wage Orders, California Code of Regulations, and Fair Labor Standards Act; and

(b) as to any Class Member who cashes their Settlement Payment, the Settlement Administrator shall include language on the Settlement Payments that informs the Class Members that the signing and negotiation of that check shall serve as the Class Member’s consent to join the Action for purposes of releasing all claims arising under the Fair Labor Standards Act that are alleged in the Action or related to the claims stated or that could have been stated in the Action, implicitly or explicitly.

31. “Released Parties” means Defendant and its former, present, and future direct and/or indirect owners, dba’s, parents, subsidiaries, affiliated and related companies, divisions, successors, predecessors, or assigns, and past, current, and future employees, attorneys, officers, directors, shareholders, owners, agents, trustees, accountants, auditors, consultants, insurers and reinsurers, heirs, executors, administrators, predecessors, successors or assigns of any of the foregoing.

32. “Release” shall mean the release and discharge of the Released Class Claims by Plaintiff and all of the Participating Class Members and the release and discharge of the PAGA

Released Claims by Plaintiff, the State of California, and all of the Aggrieved Employees. The res judicata effect of the Judgment will be the same as that of the Release of the Released Class Claims and PAGA Released Claims.

33. “Request for Exclusion” means and refers to a valid and timely request for exclusion from the Settlement of the Released Class Claims, which may be submitted by any Settlement Class Member, other than Plaintiff, pursuant to Paragraph 72(a) below.

34. “Service Payment” or “Service Award” means, as set forth further in Paragraph 49(e) below, the amount approved by the Court to be paid to the Class Representative, Dylan Cronon, in addition to his Individual Settlement Payment as a Participating Class Member.

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

36. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement.

37. “Settlement Class” consists of all current and former non-exempt, non-driver employees who were employed by Defendant in California at any time during the Class Period. Defendant represents that there are approximately 266 eligible Class Members.

38. “Settlement Class Member” or “Class Member(s)” refers to individual members of the Settlement Class.

39. Left blank intentionally.

1 **B. General Terms**

2 40. Plaintiff filed two actions against Defendant and Does 1 through 50: a class action
3 filed on July 29, 2022, and a representative PAGA lawsuit filed on October 5, 2022. The two
4 actions allege class and representative PAGA claims, including: (1) failure to pay overtime
5 wages, (2) failure to provide meal periods, (3) failure to provide rest breaks, (4) failure to pay
6 final wages, (5) failure to pay timely wages, (6) failure to provide accurate wage statements, (7)
7 failure to reimburse for business expenses, (8) failure to pay vested vacation pay, (9) failure to
8 pay reporting time pay, and (10) unfair and unlawful competition pursuant to Business and
9 Professions Code §17200 et seq.. Plaintiff also alleges related claims under PAGA in a separate
10 lawsuit.

11 41. On October 19, 2022, Defendant removed the Class Action to the United States
12 District Court for the Eastern District of California. Defendant then filed a motion to compel
13 arbitration and to dismiss the class claims, but the Parties stayed all motion practice pending the
14 completion of mediation and agreed that any settlement reached at mediation would include a
15 stipulation to remand the Class Action to state court. Defendants filed an answer to the PAGA
16 lawsuit, and the parties stipulated to stay proceedings pending mediation of the Class and PAGA
17 Action.

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

20 43. The Class Representative believes he can proceed with his representative and
21 class claims, that the Action is meritorious, and that class certification is appropriate.

22 44. The Parties have conducted a thorough investigation into the facts of the Action.
23 This includes conducting an extensive exchange of informal discovery, including Defendant's
24 written policies and practices and the production of payroll and timekeeping records for a
25 random sampling of 27 Settlement Class Members, which represents 10% of the overall class.
26 Class Counsel is both knowledgeable about and has done extensive research with respect to the
27 applicable law and potential defenses to the claims of the Settlement Class. Class Counsel has
28 diligently pursued an investigation of the Class Members' claims against Defendant. Based on
the foregoing data and on their own independent investigation and evaluation, Class Counsel is

1 of the opinion that the settlement with Defendant for the consideration and on the terms set forth
2 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
3 Class Members in light of all known facts and circumstances, including the risk of significant
4 delay and uncertainty associated with litigation, various defenses asserted by Defendant
5 (including, but not limited to, arbitrability issues and dismissal of the class claims), and
6 numerous potential appellate issues.

7 45. On May 6, 2023, Plaintiff and Defendant participated in mediation before the
8 Honorable William Pate, a retired Judge who served on the San Diego County Superior Court
9 bench and now serves as mediator on wage and hour class action cases among other matters. The
10 Action resolved at mediation pursuant to a mediator's proposal.

11 46. On May 19, 2023, the District Court remanded the Action back to the state court
12 in accordance with the Parties' stipulation to remand. The Parties agree that neither the Parties'
13 Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to
14 the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of
15 any wrongdoing or violation of any statute or law or liability on the claims or allegations in the
16 Class and PAGA Actions.

17 47. Stipulation to Class Certification and Representative Treatment. For settlement
18 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
19 do not submit a timely Request for Exclusion from the Settlement Class may be conditionally
20 certified as a settlement class and that the Aggrieved Employees are appropriate for
21 representative treatment for purposes of settlement. This stipulation to certification and
22 representative treatment is in no way an admission that class action certification and/or
23 representative treatment is proper and shall not be admissible in this or in any other action except
24 for the sole purpose of enforcing this Agreement. Nor should Defendant's stipulation to
25 conditional class certification and representative treatment be deemed as a waiver to any
26 additional defenses against class or representative action treatment, including but not limited to
27 Defendant's right to exclude Settlement Class Members who signed binding arbitration
28 agreements from participating in this Action. Should, for whatever reason, the Court fail to issue
Final Approval, the Parties' stipulation to class certification and representative treatment as part

of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification, representative treatment, and a trial should the Court decline to issue Final Approval.

48. The Parties stipulate and agree to the certification of the proposed class for settlement purposes only. The Parties further agree that this Stipulation will not be admissible in this or any other proceeding as evidence that (i) a class action should be certified, (ii) a representative action is appropriate or manageable, or (iii) Defendant is liable to Plaintiff or any Class Member, other than for the obligations under this Agreement.

C. **Terms of Settlement**

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

(a) Gross Settlement Amount: The Parties agree to settle this Action for Four Hundred Seventy-Five Thousand Dollars (\$475,000) (“the Gross Settlement Amount”). The Gross Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement Payments, Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, PAGA Penalties, and interest. Defendant shall separately pay the employer’s share of applicable payroll tax obligations due on the wage portions of the Individual Settlement Payments, which shall be reported through the Settlement Administrator.

(b) Net Settlement Amount: The “Net Settlement Amount” is defined as the Gross Settlement Amount less the court-approved Attorneys’ Fees and Costs Award, the court-approved Service Payment to the Class Representative, the court-approved Settlement Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys’ Fees and Costs Award, Service Payment to the Class Representative, or Settlement Administration Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement Amount shall be increased or decreased accordingly.

1 (c) Individual Settlement Payments: Individual Settlement Payments for the
2 Settlement Class will be calculated and apportioned from the Net Settlement Amount based on
3 the number of Eligible Pay Periods a Settlement Class Member worked during the Class Period.
4 Specific calculations of Individual Settlement Payments will be made as follows:

- 5 • The Settlement Administrator will calculate the total number of Pay
6 Periods Worked by each Settlement Class Member during the Class Period
7 and the aggregate total number of Pay Periods Worked by all Settlement
8 Class Members during the Class Period based on the Class Data provided
9 and information pertaining to extended leaves of absence and/or other
10 pertinent dates for purposes of Pay Period calculations
- 11 • To determine each Settlement Class Member's estimated Individual
12 Settlement Payment, the Settlement Administrator will use the following
13 formula: The Net Settlement Amount will be divided by the aggregate
14 total number of Pay Periods Worked, resulting in the "Pay Period Value."
15 Each Settlement Class Member's Individual Settlement Payment will be
16 calculated by multiplying his or her total number of Pay Periods Worked
17 during the Class Period by the Pay Period Value.
- 18 • Individual Settlement Payments will be reduced by any required
19 deductions for each Participating Class Member as specifically set forth
20 herein, including employee-side tax withholdings and deductions.
- 21 • The entire Net Settlement Amount will be disbursed to all Participating
22 Class Members. If there are any valid and timely Requests for Exclusion,
23 the Settlement Administrator shall proportionally increase the Individual
24 Settlement Payment for each Participating Class Member according to the
25 number of Pay Periods Worked, so that the amount actually distributed to
26 the Settlement Class equals 100% of the Net Settlement Amount.

26 (d) Allocation of Individual Settlement Payments: The Individual Settlement
27 Payments will be allocated based on the allegations in the Action as follows: One-quarter (25%)
28 will be allocated as wages subject to withholding of all applicable local, state and federal taxes;

1 and three-quarters (75%) will be allocated for interest and penalties (pursuant to, e.g., California
2 Labor Code sections 203, 210, 226, etc.) from which no taxes will be withheld. The Settlement
3 Administrator will issue to each Participating Class Member an Internal Revenue Service Form
4 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with
5 respect to the penalties and interest allocations.

6 (e) Service Payment to Class Representative: The amount, if any, awarded to the
7 Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed
8 \$7,500, in exchange for the services Plaintiff performed on behalf of the Class (including taking
9 steps to support the Settlement) and for entering into the general and expansive release discussed
10 hereinafter. Defendant agrees not to oppose this request if Plaintiff does not request exclusion
11 from the Settlement Class and does not take any action, directly or indirectly, to undercut this
12 Settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount.
13 The Class Representative will be issued IRS Form 1099 in connection with this payment.
14 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this
15 payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less
16 than the requested amount shall not be a basis for Class Counsel to void this Settlement
17 Agreement or to appeal this aspect of the Court's ruling. Should the Court approve a lesser
18 amount for the Service Payment, the difference shall be added to the Net Settlement amount to
19 be distributed to the Participating Class Members.

20 (f) Attorneys' Fees and Costs Award: Defendant will take no position on and agrees
21 not to oppose a request by Class Counsel to the Court for an award of attorneys' fees of not more
22 than one-third of the Gross Settlement Amount (\$158,333.33), plus reasonable litigation costs
23 not to exceed \$20,000 ("Attorneys' Fees and Cost Award"), subject to Court approval. The
24 Attorneys' Fees and Cost Award shall be paid from the Gross Settlement Amount, and except for
25 this award, Defendant shall have no further obligation to pay any attorneys' fees, costs, or
26 expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by
27 Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to
28 the Participating Class Members. The Parties agree that any amount awarded as attorneys' fees
and costs to Class Counsel less than the requested amount shall not be a basis for Class Counsel

1 to rescind or otherwise void this Settlement Agreement. The Settlement Administrator shall issue
2 to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded
3 by the Court.

4 (g) Settlement Administration Costs: The fees and other charges of the Settlement
5 Administrator will be paid from the Gross Settlement Amount, not to exceed \$6,500 unless
6 approved by Plaintiff, Defendant, and the Court.

7 (h) PAGA Penalties: The Parties agree that \$50,000 is allocated to PAGA
8 Penalties and is to be paid from the Gross Settlement Amount, subject to the Court's approval.
9 Of this amount, \$37,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
10 the Private Attorney General Act of 2004 ("PAGA") and \$12,500 (25%) will be paid to the
11 Aggrieved Employees based upon the number of Pay Periods Worked by each Aggrieved
12 Employee during the PAGA Period, which will be treated entirely as civil penalties and shall be
13 reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA
14 of the Settlement.

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

1 Aggrieved Employees understand and agree that they will be solely responsible for the payment
2 of any taxes and penalties assessed on their respective payments described herein and will hold
3 Defendant harmless from and against any claims resulting from treatment of such payments as
4 non-taxable damages.

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

1 50. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
2 Participating Class Members under this Agreement, as well as any other payments made
3 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
4 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
5 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
6 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
7 intention that this Settlement will not affect any rights, contributions, or amounts to which any
8 Settlement Class Members may be entitled under any benefit plans. The Parties agree that the
9 amounts paid pursuant to this Settlement are not for days or hours worked, and shall not be
10 included toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

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

21 52. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
22 adequate, and will so represent same to the Court.

23 D. **Release by Plaintiff and the Settlement Class**

24 53. Upon entry of the Final Approval Order and Defendant's funding of the
25 Settlement Amount, and except as to such rights or claims as may be created by this Settlement
26 Agreement, the Participating Class Members will forever completely release and discharge the
27 Released Parties from the Released Class Claims for the Class Period. It is the intent of the
28 Parties that the Final Approval Order and judgment entered by the Court shall have full equitable

1 and collateral estoppel and *res judicata* effect and be final and binding upon Participating Class
2 Members regarding the Released Class Claims.

3 54. Each Participating Class Member will be deemed to have made the foregoing
4 Release as if by manually signing it.

5 55. Upon entry of the Final Approval Order and Defendant's funding of the
6 Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA, and on
7 behalf of the State of California and all Aggrieved Employees, will forever completely release
8 and discharge the Released Parties from the PAGA Released Claims through the PAGA Period.
9 It is the intent of the Parties that the Final Approval Order and judgment entered by the Court
10 shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding
11 upon Aggrieved Employees regarding the PAGA Released Claims.

12 56. Each Aggrieved Employee and the LWDA will be deemed to have made the
13 foregoing Release as if by manually signing it.

14 57. Plaintiff and Defendant intend that the Settlement described in this Agreement
15 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
16 arbitration, demand, or other action of any kind, by each and all of the Participating Class
17 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
18 Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph
19 only applies to Participating Class Members and, thus, does not apply to any Class Member who
20 timely and validly submits a Request for Exclusion, nor does it apply to Aggrieved Employees
21 with respect to the PAGA Released Claims.

22 58. Plaintiff and Defendant also intend that the Settlement described in this
23 Agreement will release and preclude any further PAGA claim, whether by lawsuit,
24 administrative claim or action, arbitration, demand, or other PAGA action of any kind, by each
25 and all of the Aggrieved Employees to obtain a recovery based on, arising out of, and/or related
26 to any and all of the PAGA Released Claims. The Aggrieved Employees shall be so notified in
27 the Notice and Class Counsel shall provide appropriate notice to the LWDA of this Agreement
28 prior to the filing of the Motion for Preliminary Approval. This section is not intended to

1 preclude any Aggrieved Employee other than Plaintiff from bringing any claim other than a
2 PAGA claim, except for other Released Class Claims set forth in this Agreement.

3 59. Class Representative, on behalf of himself and the Participating Class Members,
4 acknowledges and agrees that the claims, including claims for unpaid wages and untimely
5 payment of wages, are disputed, and that the payments set forth herein constitute payment of all
6 sums allegedly due to them. Class Representative, on behalf of himself and the Participating
7 Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not
8 applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

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

12 **E. Release by Class Representative**

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

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

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

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

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

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

17 63. Class Representative represents and warrants that he has not filed and will not file
18 any other lawsuit, administrative claim or action, arbitration, demand, or other action of any kind
19 against Defendant or the Released Parties. Class Representative represents and warrants that the
20 only pending claims against Defendant or the Released Parties are included in this Action.

21 **F. Interim Stay of Proceedings**

22 64. Pending completion of all of the prerequisites necessary to effectuate this
23 Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the
24 Action except such as are necessary to effectuate the Settlement.

25 **G. Notice Process**

26 65. Appointment of Settlement Administrator. The Parties have agreed to the
27 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
28 including mailing the Notice, using standard devices to obtain forwarding addresses,
independently reviewing and verifying documentation associated with any claims or opt-out

1 requests, resolving any disputes regarding the calculation or application of the formula for
2 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
3 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
4 performing unclaimed funds due diligence, reporting and performing remittance obligations, and
5 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
6 orders.

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

19 67. Class Data. Within 14 calendar days after entry of the Preliminary Approval
20 Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
21 Administrator will run a check of the Class Members' addresses against those on file with the
22 U.S. Postal Service's National Change of Address Database. The Class Data provided to the
23 Settlement Administrator will remain confidential, shall be used solely to administer the
24 Settlement, and it will not be used or disclosed to anyone but Class Counsel pursuant to a
25 Stipulated Protective order, except as required by applicable tax authorities, pursuant to
26 Defendant's express written consent, or by order of the Court. Nothing herein shall prevent Class
27 Counsel from communicating with Class Members regarding the Action and Settlement. The
28 Settlement Administrator will be required to sign and provide to Defendant a Certification
Regarding Confidential Discovery Materials and to be bound by a Stipulated Protective Order as

1 entered by the Court. The Settlement Administrator shall use due care with respect to the storage,
2 custody, use, and/or dissemination of the confidential information. Such information must be
3 stored in a secure fashion and all persons who access the data must agree to keep it confidential.

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

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

19 70. Disputes Regarding Information on Notices of Settlement. Class Members are
20 deemed to participate in the Settlement, unless they timely opt-out, and Aggrieved Employees
21 may not opt out of the PAGA Released Claims. The Notice will inform Class Members of
22 his/her estimated Individual Settlement Payment and the number of Pay Periods Worked during
23 the Class Period and during the PAGA Period. Class Members may dispute their Pay Periods
24 Worked if they feel they should be credited with more Eligible Pay Periods than Defendant's
25 records show by timely submitting evidence to the Settlement Administrator. Defendant's
26 records will be presumed determinative absent reliable evidence to rebut Defendant's records,
27 but the Settlement Administrator will evaluate the evidence submitted by the Class Member and
28 provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and
confer in good faith about the evidence to determine the Class Member's actual number of Pay

1 Periods Worked and estimated Individual Settlement Payment. If Class Counsel and Defense
2 Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to
3 render a final decision. Class Members will have until the Notice Response Deadline to dispute
4 Pay Periods Worked, object or opt out, unless extended by the Court. In the event that the
5 Settlement Administrator increases the number of Pay Periods Worked for any Settlement Class
6 Member, then the Settlement Administrator will recalculate the Participating Class Members'
7 Individual Settlement Payments; accordingly, in no event will Defendant be required to increase
8 the Gross Settlement Amount.

9 71. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
10 for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing, a
11 declaration of due diligence and proof of mailing with regard to the mailing of the Notices of
12 Settlement.

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

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

23 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
24 CLASS IN THE FFE LAWSUIT. I UNDERSTAND THAT IF I
25 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
26 RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

27 To be valid, any Request for Exclusion must include the full name, address, telephone
28 number, last four digits of the social security number or date of birth, and signature of the
Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by

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

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

19 (c) Objections to Settlement of the Released Class Claims. Any Settlement
20 Class Member, other than Plaintiff, may object to the terms of this Agreement, except as to the
21 PAGA Released Claims. To object, a Settlement Class Member shall inform the Settlement
22 Administrator, in writing, at least 10 calendar days before the Final Approval Hearing, of his or
23 her objection which must be postmarked by the Notice Response Deadline at the address set
24 forth in the Notice. Such objection shall include the objecting Settlement Class Member's full
25 name, address, telephone number, last four digits of the social security number or date of birth,
26 signature, and dates of employment with Defendant, in addition to the case name and number,
27 the basis for the objection, including any legal support and each specific reason in support of the
28 objection, as well as any documentation or evidence in support thereof, and, if the Objecting
Settlement Class Member is represented by counsel, the name and address of his or her counsel.

1 The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense
2 Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall attach
3 the same to its declaration of due diligence and file with the Court prior to the Final Approval
4 Hearing. Any Participating Class Member who files an objection remains eligible to receive
5 monetary compensation from the Settlement. Plaintiff and Defendant shall not be responsible for
6 any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to
7 any objections to the Settlement. Submitting an objection does not preserve the right to appeal a
8 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
9 and properly intervening or filing a motion to vacate the judgment under Code of Civil
10 Procedure Section 663. Settlement Class Members and Aggrieved Employees may not object to
11 or opt-out of the Settlement with respect to the PAGA Released Claims.

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

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

23 (f) Settlement Class Members will have until the Notice Response Deadline
24 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
25 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
26 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
27 request of Class Counsel or Defense Counsel.

28 (g) Defective Submissions. If a Settlement Class Member's Request for
Exclusion or objection is defective as to the requirements listed herein, that Settlement Class

1 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
2 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
3 defective submission to advise the Settlement Class Member that his or her submission is
4 defective and that the defect must be cured to render the Request for Exclusion or objection
5 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
6 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
7 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
8 received by fax within that period, it will be deemed untimely and disregarded.

9 73. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
10 the QSF of the Gross Settlement Amount within fifteen (15) calendar days after the Effective
11 Date. Defendant separately shall pay its share of employer payroll taxes as calculated and
12 directed by the Settlement Administrator. Once Defendant has complied with its obligation set
13 forth in this paragraph, it shall be deemed to have satisfied all of the terms and conditions of this
14 Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall
15 have no further obligations under the Agreement, regardless of what occurs with respect to the
16 further administration of the Settlement. The Settlement Administrator (and not Defendant) shall
17 issue the applicable W-2s and IRS Form 1099 reflecting all payments to the Class Members.

18 74. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
19 Gross Settlement Amount into the QSF, the Settlement Administrator will mail the Individual
20 Settlement Payments to the Participating Class Members, the payment to Class Counsel for the
21 Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment
22 to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs.

23 75. Deadline for Cashing Settlement Checks. Participating Class Members and
24 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
25 Administrator to cash their settlement checks. If any Participating Class Member's or Aggrieved
26 Employee's check is not cashed within that period, the check will be void and a stop-payment
27 will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California
28 State Controller's Office in the name of the Class Member or Aggrieved Employee. The release
will be binding upon all Participating Class Members and Aggrieved Employees who do not cash

1 their checks within the 180-day period. In the event that any settlement check is returned to the
2 Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within
3 five (5) business days of receipt of the returned settlement check, perform a skip trace to locate
4 the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
5 located by these means, the Administrator will have ten (10) business days to re-issue the check.
6 Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator
7 will have any liability for lost or stolen settlement checks, forged signatures on settlement
8 checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the
9 event a Participating Class Member or Aggrieved Employee notifies the Settlement
10 Administrator that he or she believes that a settlement check has been lost or stolen, the
11 Settlement Administrator shall immediately stop payment on such check. If the check in question
12 has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a
13 replacement check.

14 76. No person shall have any claim against Defendant or the Released Parties,
15 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
16 mailings, distributions, payments or reports made in accordance with or pursuant to this
17 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
18 Agreement.

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

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

25 78. Promptly after execution of this Settlement Agreement, Plaintiff will move the
26 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
27 accomplishing the following:
28

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

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

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

(d) Preliminarily approving this Settlement; and

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

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

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

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

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

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

(c) Entering Final Judgment based on the terms set forth in this Agreement, thereby permanently barring all Participating Class Members from prosecuting any Release Class Claims against any of the Released Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any PAGA Released Claims against any of the Released Parties.

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

1 **J. Voiding the Agreement**

2 82. If ten percent (10%) or more of the Class Members submit a timely and valid
3 Request for Exclusion, Defendant will have, in its sole discretion, the right to void and withdraw
4 from the Settlement by giving written notice to Class Counsel and the Settlement Administrator
5 within ten (10) days after expiration of the Notice Response Deadline.

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

9 84. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
10 have no further obligations under the Settlement, including any obligation by Defendant to pay
11 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
12 Settlement.

13 85. If the Settlement is voided or fails for any reason, any costs incurred by the
14 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
15 specified in this Agreement.

16 **K. Other Terms**

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

19 87. No Waiver of Defendant's Arbitration Agreements. The Parties agree that this
20 Settlement and any effort to obtain the Court's approval of the Settlement, including but not
21 limited to, seeking conditional certification of Class for the sole purpose of settlement, does not
22 constitute a waiver of Defendant's right to seek to enforce any alleged arbitration agreements
23 entered into between Defendant and some Class Members in the Action or any future
24 proceedings.

25 88. Full and Complete Defense. This Agreement may be pleaded by any Released
26 Party as a full and complete defense to, and may be used as the basis for an injunction against,
27 any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted,
28 asserting any Released Claim.

1 89. Parties' Authority. The signatories hereto represent that they are fully authorized
2 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
3 hereof. The signatories hereto further represent that the Parties to this Agreement are represented
4 by competent counsel, and they have had an opportunity to consult with counsel prior to
5 authorizing its execution.

6 90. No Publicity. The Parties will not publicize the Settlement or disclose it to third
7 parties, except as required or necessary to effectuate its terms and comply with law, including the
8 payment of taxes. Specifically, Plaintiff and Plaintiff's counsel shall not publicize the settlement
9 on their websites, in advertising/marketing materials or on social media. The Parties and their
10 counsel agree that they will not issue any press releases or initiate any contact with the media
11 about the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry
12 about the settlement from the media, counsel may respond only after the motion for preliminary
13 approval of the settlement has been filed and only by confirming the accurate terms of the
14 settlement. Nothing in this provision shall prevent Defendant from making any required
15 disclosure.

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

28 92. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,

1 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
2 cause of action or rights released and discharged by this Settlement Agreement.

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

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

24 95. Notices. Unless otherwise specifically provided herein, all notices, demands, or
25 other communications pursuant to this Agreement shall be in writing and shall be deemed to
26 have been duly given as of the third business day after mailing by United States registered or
27 certified mail, return receipt requested, addressed:
28

To the Settlement Class Members and Aggrieved Employees:

Gregory Mauro, SBN 222239
greg@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel: (949) 387-7200
Fax: (949) 387-6676

To Defendant:

Dessi N. Day
dday@greeneroberts.com
GREENE & ROBERTS
402 West Broadway, Suite 1025
San Diego, CA 92101
Tel: (619) 398-3400 | Fax: (619) 330-4907

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

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

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

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

8 100. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
9 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
10 Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
11 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
12 of this Agreement.

13 101. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
14 this Agreement is intended by the Parties to be, and shall be, enforceable, binding, and
15 admissible in a court of law.

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

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

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

26 105. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
27 because the members of the Settlement Class are numerous, it is impossible or impractical to
28 have each Class Member execute this Settlement Agreement. The Notice will advise all
Settlement Class Members of the binding nature of the releases provided herein and such shall

1 have the same force and effect as if this Settlement Agreement were executed by each Settlement
2 Class Member.

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

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

12 108. Confidentiality and Public Comment. The Parties and attorneys will keep the
13 terms of the settlement confidential until the filing of the motion for preliminary approval of the
14 class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise
15 publicize the terms of the Settlement to any settlement or verdict reporting service or on their
16 websites or social media. Class Counsel will not include or use the settlement for any marketing
17 or promotional purposes other than as expressly allowed above.

18 109. **Proportional Increase to Gross Settlement Amount:** The Gross Settlement
19 Amount was calculated with, and is premised on, the understanding that Class Members worked
20 approximately 13,000 work weeks during the Class Period. If the actual number of workweeks
21 eligible to participate in the Settlement is greater than 9% of this estimate, then Defendant has
22 the option to either: (1) agree to increase the Gross Settlement Amount on a proportional basis
23 above 9% (i.e., if there is a 10% increase in the number of workweeks during the Class Period,
24 Defendant would agree to increase the Gross Settlement Amount by 1%); or (2) elect to end the
25 Class Period on an earlier date at the Defendant's discretion in order to limit the covered
26 workweeks to 9% more than the estimate provided in lieu of paying an increase to the Gross
27 Settlement.

28 ///

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1 Dated: July 18, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3 DocuSigned by:
4 Dylon Cronon
5 B00CECADF2E5429...
6 Dylon Cronon

CLASS COUNSEL:

7 Dated: July 18, 2023

JAMES HAWKINS APLC

8
9 BY: [Signature]
10 Gregory Mauro
11 Attorneys for Plaintiff

12 Dated: July 18, 2023

DEFENDANT:

13 FFE TRANSPORTATION SERVICES, INC.

14
15 [Signature]
16 By: Traci Bilbo
17 Title: VP of Human Resources

18 Dated: July 18, 2023

19 GREEN & ROBERTS

20
21 BY: [Signature]
22 Dessi N. Day
23 Attorneys for Defendant
24 FFE Transportation Services, Inc. dba Frozen Food
25 Express, a Delaware corporation
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Exhibit C

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 01/23/2024

Client: FFETRANSPORT - Dylon W. Cronon

Matter: FFETRANSPORT - FFE Transportation Services, Inc. dba Frozen Food Express- Dylon W. Cronon

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
07/28/2022	FST	First Legal Network Filing, S&C, Initial Docs IN#30205948	\$1,679.31		Unbilled				
08/01/2022	POS	Postage - ntc pursuant to labor code sections 2698	\$9.17		Unbilled				
08/01/2022	FIL	Filing Fee - LWDA 7.28.22	\$75.00		Unbilled				
09/16/2022	FST	First Legal Network - Process-Branch: Class Complaint and Initial Docs; E-Filing: POS IN#30212421	\$212.13		Unbilled				
11/30/2022	POS	Postage - 11.23.22 mailing LWDA Cert Mail	\$7.82		Unbilled				
11/30/2022	FIL	Filing Fee 11.23.22 LWDA	\$75.00		Unbilled				
12/01/2022	FST	First Legal Network - Process Serve - S&C, Initial Docs, Ntc IN# 30222171	\$168.90		Unbilled				
12/06/2022	POS	Postage - 12.7.22 Crs to Admin re Ntc of Voiding the Texas Choice of Law Found	\$7.82		Unbilled				
04/05/2023	MED	Mediation Services - IN#6548232 CK#10742	\$4,475.00		Unbilled				
05/24/2023	EXA	Expert Analysis - IN # 8633 Check # 10862	\$2,300.00		Unbilled				
07/28/2023	FST	First Legal Network - Filing - Joint Stip to File Fac, Proposed Order In# 30244254	\$192.71		Unbilled				
08/01/2023	FST	First Legal Network - Filing - Notice of Order, Joint Stip to Consolidate, Motion, Dec (2) Order IN#30248438	\$2,254.19		Unbilled				
08/09/2023	FST	First Legal Network - Filing - Ntc of Motion, FAC IN# 30248438	\$253.02		Unbilled				
09/01/2023	FST	First Legal Network - Filing - POS of LWDA Submission re settlement IN# 30252348	\$114.11		Unbilled				
01/18/2024	FIL	Filing Fee - Estimated costs till case completion - Mtn for Final Approval, POS of Ntc of LWDA, Supplemental Docs, Admins Decl re Disbursement	\$420.62		Unbilled				

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed-----			\$0.00						
Total Fees Unbilled : -----			\$0.00						
Total Fees Received : -----			\$0.00						
Total Soft Cost Billed : -----			\$0.00						
Total Soft Cost Unbilled : -----			\$0.00						
Total Soft Cost Received : -----			\$0.00						
Total Hard Cost Billed : -----			\$0.00						
Total Hard Cost Unbilled : -----			\$12,244.80						
Total Hard Cost Received : -----			\$0.00						
Total Taxes Billed : -----			\$0.00						
Total Taxes Unbilled : -----			\$0.00						
Total Taxes Received : -----			\$0.00						
Total Late Charges Billed : -----			\$0.00						
Total Late Charges Unbilled: -----			\$0.00						
Total Late Charges Received : -----			\$0.00						
Trust Balance: -----			\$0.00						

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 01/18/2024
Client: FFETRANSPORT - Dylon W. Cronon
Matter: FFETRANSPORT004 - FFE Transportation Services, Inc. dba Frozen Food Express- PAGA W. Cronon

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Balance Forward:			\$0.00						
10/04/2022	FST	First Legal Network - Filing - S&C, Initial Docs IN# 30216387	\$569.51		Unbilled				
12/27/2022	FST	First Legal Network - E-Filing - Proof of Service IN# 30224217	\$35.75		Unbilled				
01/30/2023	FST	First Legal Network - Filing - Adv \$1000 Complex fee IN# 30224217	\$1,210.11		Unbilled				
Total:			\$1,815.37	\$0.00					
Balance:			\$1,815.37						
Total Fees Billed-----		\$0.00							
Total Fees Unbilled : -----		\$0.00							
Total Fees Received : -----		\$0.00							
Total Soft Cost Billed : -----		\$0.00							
Total Soft Cost Unbilled : -----		\$0.00							
Total Soft Cost Received : -----		\$0.00							
Total Hard Cost Billed : -----		\$0.00							
Total Hard Cost Unbilled : -----		\$1,815.37							
Total Hard Cost Received : -----		\$0.00							
Total Taxes Billed : -----		\$0.00							
Total Taxes Unbilled : -----		\$0.00							
Total Taxes Received : -----		\$0.00							
Total Late Charges Billed : -----		\$0.00							
Total Late Charges Unbilled: -----		\$0.00							
Total Late Charges Received : -----		\$0.00							
Trust Balance: -----		\$0.00							

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Exhibit D

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16 Attorneys for Plaintiff DYLON W. CRONON,
17 individually and on behalf of all others similarly situated

18
19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF SAN JOAQUIN**

21 DYLON W. CRONON, individually and on
22 behalf of all others similarly situated,

23 Plaintiff,

24 v.

25 FFE TRANSPORTATION SERVICES, INC.
26 dba FROZEN FOOD EXPRESS, a Delaware
27 Corporation and DOES 1-50, inclusive,

28 Defendants.

CASE NO.: STK-CV-UOE-2022-6572

DEPT: 10C

JUDGE: HON. JAYNE LEE

**DECLARATION OF PLAINTIFF DYLON W.
CRONON IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: February 20, 2024

Time: 09:00 a.m.

Dept.: 10C

DECLARATION OF DYLAN W. CRONON

I, DYLAN W. CRONON hereby declare as follows:

1. I am over the age of eighteen and I submit this Declaration in support of the Plaintiffs' Motion for Final Approval of Class Action Settlement. The following is based upon my personal knowledge and if called as a witness, I could and would competently testify thereto.

2. I was employed by Defendant FFE TRANSPORTATION SERVICES INC., dba FROZEN FOOD EXPRESS ("Defendant") in approximately July 2019 as a Non-Exempt Employee working as a Yard Hostler and Dock Worker and worked during the liability period for Defendant until my separation from Defendant's employ in approximately August 2021.

3. As a non-exempt employee, I suffered the same damages as other employees. These included not being paid all my wages, not provided meal periods and rest periods, not reimbursed for business expenses I incurred, not provided accurate wage statements, not paid my vested vacation pay, and not timely paid wages during my employment and upon my separation from Defendant's employ all in accordance with California law. As a result of these alleged violations, I sought consultation with my attorneys at James Hawkins, APLC.

4. Based upon my allegations, and after consultation and full disclosure from my attorneys about the potential risks I faced as a Plaintiff in a putative class action, I freely decided to pursue this lawsuit to try and vindicate my rights and the rights of others who also worked for Defendants and suffered similar harms due to Defendants' common practices and policies.

5. Prior to filing my action, my attorneys and I had multiple conferences about the factual bases for the claims that I wanted to pursue against Defendant. During those conferences, my attorneys provided me with an overview of how those claims would be litigated and generally educated me about the nature of complex/representative litigation and my role as the representative Plaintiff.

6. My attorneys provided me with a draft of the complaint for my review and

1 approval. I closely reviewed the complaint to ensure accuracy and completeness. As a
2 result, I caused my attorneys to file the class action complaint alleging claims for the allegations
3 alleged therein. Thereafter, I have been fully involved in my case. Following the filing of the
4 complaint, I collaborated with my attorneys on the prosecution of my claims, and I regularly
5 contacted my attorneys to stay current on the status of the litigation, and to discuss my
6 attorneys' progress in prosecuting the claims.

7
8 7. Since I believe I was not accurately paid wages, not provided meal periods and
9 rest periods, not reimbursed for business expenses I incurred, not paid my vested vacation pay,
10 not timely paid wages during my employment and at the time of my separation from
11 Defendant's employ, and therefore not provided accurate itemized wage statements, I believe
12 that I have been similarly injured as to all other class members in the settlement who worked for
13 Defendants during the class period. I believe the claims asserted in the Complaint is also
14 shared by the other Class Members. I worked with various other non-exempt employees and I
15 believe we were all treated the same and subject to the same unlawful policies.

16 8. Since I agreed to become a Class Representative, I have worked every step of the
17 way with my attorneys. During the course of the litigation I have always kept the best interest
18 of the Class Members on equal footing as mine. I have been, and I am willing to continue to
19 pursue the Class Members' claims vigorously on our collective behalf if the Settlement is not
20 finally approved. As a result, I firmly believe that I do not have any interests adverse to the
21 interests of the Class Members. I have maintained the Class Members best interest from the
22 inception of the case.

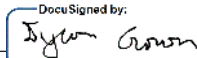
23 9. As one of the Class Representatives, I have spent numerous hours consulting
24 with my attorneys, providing documentation, consulting with other Class Members, responding
25 to questions by my attorneys, providing documents to my attorneys, working with my attorneys
26 to review documents received, helping my attorneys in preparing for the mediation and
27 attending the mediation via telephone. I was consulted about the status of the case and provided
28 constant feedback about the case from my attorneys including the mediation, settlement
negotiations and eventual settlement. I estimate I have spent approximately 44 hours working

1
2 on this case.

3 10. I understand from my counsel that there have been zero objections and zero
4 request for opt outs by Class Members and a result have embraced the settlement.

5 11. From the beginning of this case, I have freely chosen to accept the risks of being
6 one of the Class Representatives in this class action lawsuit. I chose to assume these risks and
7 pursue the claims on behalf of the Class Members as I wanted to vindicate their rights. I believe
8 we have achieved that result with the settlement and the individual payments to the Class
9 Members. I believe the settlement is fair reasonable and adequate based on the numerous
10 defenses asserted by Defendant. I believe the efforts and work I put forth helped to achieve the
11 fair settlement that will benefit the Class Members. As a result of my efforts, I also believe the
12 Service Award is reasonable, and I respectfully request the Court approve the amount of
13 \$7,500.00 to the named Plaintiff.

14 I declare under penalty of perjury under the laws of the state of California that the
15 foregoing is true and correct. Executed on January 18, 2024, at Central Point, Oregon.

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19 DYLEAN W. CRONON
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