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

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

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

22 Plaintiff,

23 v.

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

27 Defendants.

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

**DECLARATION OF JAMES HAWKINS IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date:
Time:
Dept.: 10C

DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

1. I am an individual over the age of 18. I am a partner at the law firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff Dylon W. Cronon (hereinafter referred to as “Plaintiff” or “Class Representative”), who commenced this Class and PAGA action on behalf of the Class Members and Aggrieved Employees. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, which Plaintiff filed concurrently herewith, along with the supporting Memorandum of Points and Authorities. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. Attached hereto as **Exhibit A** is a true and correct copy of the executed Settlement Agreement which the Parties ask the Court to approve. Attached hereto as **Exhibit B** is a true and correct copy of the Notice of Proposed Settlement of Class Action and Certification of Settlement Class. (“Notice” or “Class Notice”).

3. On July 29, 2022, Plaintiff submitted a letter to the California Labor Workforce Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act of 2004 (the “PAGA”), and also sent a letter to Defendant requesting the production of his personnel and timekeeping records in order to further evaluate his wage and hour claims.

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

5. Defendant retained counsel and, on October 19, 2022, Defendant removed the Class Action to the United States District Court for the Eastern District of California. Defendant

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

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

19 7. Plaintiff's Counsel conducted a thorough investigation into the factual and legal
20 issues implicated by Plaintiff's claims and was able to objectively assess the settlement's
21 reasonableness. For example, prior to filing the action, Plaintiff contacted Plaintiff's Counsel to
22 discuss the factual bases for pursuing their actions against Defendant for Labor Code violations.
23 Plaintiff was intimately familiar with Defendant's labor policies and practices, and over the course
24 of multiple interviews, knowledgeably summarized those policies and practices to Plaintiff's
25 Counsel. During those conversations, Plaintiff's Counsel explained how the policies and practices
26 were instituted and provided valuable insight into how they gave rise to the alleged Labor Code
27 violations. Plaintiff's Counsel determined that there were legally sufficient grounds for pursuing
28 the Actions against Defendant and in preparation for drafting the complaints, Plaintiff's Counsel

1 conducted their own independent preliminary investigations into the factual bases for Plaintiff's
2 claims, which entailed, *inter alia*, a careful examination of Plaintiff's personnel files and
3 associated records.

4 8. In summary, Plaintiff's Counsel performed a thorough investigation into the
5 claims at issue, which included: (1) determining Plaintiff's suitability as private attorneys general
6 and class representative through interviews, background investigations, and analyses of employment
7 files and related records; (2) evaluating all of Plaintiff's potential representative claims; (3)
8 researching similar wage and hour class actions as to the claims brought, the nature of the positions,
9 and the type of employer; (4) analyzing employees' time and wage records and driver manifest; (5)
10 reviewing Defendant's employment policies and practices; (6) researching settlements in similar
11 cases and the prior settlement in this case; (7) evaluating Plaintiff's claims and estimating
12 Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
13 participating in the mediation.

14 9. By engaging in such a thorough investigation and evaluation of Plaintiff's claims,
15 Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in
16 the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class
17 Members in light of all known facts and circumstances, including the risk of significant delay and
18 uncertainty associated with litigation, and various defenses asserted by Defendant.

19 10. Defendant denies any wrongdoing and deny liability with respect to the matters
20 alleged in the Complaint and believe that it has valid defenses to all of Plaintiff's claims.
21 Defendant further contends that they complied with all wage and hour laws applicable to the
22 employment of Plaintiff and other Class Members. To date, no class has been certified and no
23 court has made any findings that Defendant engaged in any wrongdoing or in any wrongful
24 conduct, or otherwise acted improperly or in violation of any law, rule or regulation with respect
25 to any of the issues presented in this action.

26 11. The Parties have conducted themselves in informed, good faith arms-length
27 negotiations after conducting discovery and exchanging extensive evidence and information about
28 the claims and defenses of this lawsuit through discovery, and engaging in pre-mediation

1 discussions, telephone conferences, and correspondence all aimed at settling their dispute.

2 12. In preparation for the mediation, Plaintiff reviewed the entire discovery and
3 information produced. The information had to be extrapolated and processed to figure out the
4 amount of compensation Plaintiff contends are due to the Classes. The evidence and information
5 gathered and reviewed by counsel provided a factual framework for a comprehensible and reliable
6 damage model pertaining to all Settlement Class Members. The mediation included discussions
7 and examination of the proposed Classes and the Parties' respective positions on the legal and
8 factual issues raised in the Complaint.

9 13. As a result of the mediation, the Parties agreed to settle this matter for a Gross
10 Settlement Amount ("GSA") of \$475,000.00. Plaintiff's counsel balanced the terms of the
11 proposed Settlement against the risk of litigation and probable outcome at the class certification
12 stage, and if any Class were certified, at trial. Based on their own respective independent
13 investigations and evaluations, and after taking into account the sharply disputed factual and legal
14 issues involved in this matter, the risks attending further prosecution of the case, and the monetary
15 benefits received under the Settlement despite the questionable nature of the claims, Plaintiff's
16 counsel is of the opinion that Settlement for the consideration and on the terms set forth in the
17 Settlement Agreement is fair, reasonable and adequate and is in the best interests of Plaintiff and
18 the Class. Counsel for the Parties investigated the applicable law as applied to the facts
19 discovered regarding the claims of Plaintiff, Defendant's defenses thereto and the damages
20 claimed by Plaintiffs on behalf of the Settlement Class.

21 14. The GSA includes, without limitation, (1) attorneys' fees in the amount of
22 \$158,333.33 and reimbursement of reasonable litigation costs and expenses in the amount of up to
23 \$20,000.00 to Class Counsel ("Attorneys' Fees and Costs"); (2) Named Plaintiff Class
24 Representative Service Award in the amount of \$7,500.00 ("Service Award"); (3) fees and
25 expenses of administration of the Settlement to the Settlement Administrator in an amount of
26 \$6,500.00 ("Settlement Administration Costs"); (4) \$50,000.00 to PAGA with twenty-five percent
27 (25%) share of the PAGA Penalties to be a part of the Net Settlement Amount that will be
28 distributed to Class Members in the PAGA Group in the amount of \$12,500.00; and (5) the

seventy-five percent (75%) share of PAGA Penalties (“LWDA Payment”) in the amount of \$37,500.00 to the California Labor and Workforce Development Agency (“LWDA”). **The Entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.** After deductions, the Net Settlement Amount (“NSA”) is estimated to be approximately **\$232,666.67**. The Class Members are to be paid based from the NSA on a pro rata basis based upon the weeks each class member worked in comparison to the total work weeks worked by all Class Members.

15. Fairness of the Settlement is demonstrated by the uncertainty and risks to Plaintiff involved both in not prevailing on one or more of the causes of action or theories alleged in the operative Complaints and in non-certification, and if successful, Defendant disputes the ability of Plaintiff to certify a class in this case. Defendant also argued it maintained lawful written policies that were provided to the class members and enforced those policies. Yet, despite the defenses proffered by Defendant, the proposed Settlement commits Defendant to pay each Class Member a portion of the NSA. The amount to be paid to the Classes is fair, adequate and reasonable given the significant risk to Plaintiff and the Class in continuing with the litigation and not prevailing on their claims at class certification or at trial or not being paid anything even if trial was successful.

16. One of the primary claims in this action is for wage statement violations under Labor Code § 226. During the statutory period, Plaintiff alleges that Defendant provided the Class with wage statements that failed to contain multiple items required under § 226(a), including the total hours worked during the pay period, the applicable rates of pay and reimbursement expenses, among other things. However, Defendant raised a variety of defenses to this claim, including that Plaintiff would be unable to prove the required “knowing and intentional” and “injury” elements under § 226(e) and, thus, no liability would attach.

17. Plaintiff also alleged that he and the Class Members were subjected to overtime violations due to a variety of allegedly illegal practices. For instance, Plaintiff alleged that he and the others non-exempt employees received non-discretionary bonus and shift differential pay which was not included in the regular rate of pay for overtime. However, Defendants presented evidence that it had compliant policies and practices regarding payment of overtime, and that

1 employees received proper compensation for overtime which factored in shift differential pay and
2 were in many instances overpaid based on the calculations used by Defendant. Plaintiff also
3 challenges the propriety of Defendant's pay practices, arguing that Defendant failed to account for
4 off-the-clock work performed by Plaintiff and the Class Members. Plaintiff claimed that he and
5 the putative class were denied proper meal and rest breaks and were not paid break premium pay
6 when owed. Most importantly, Plaintiff alleged that these unpaid wage claims triggered waiting
7 time penalties for each *former* Class Member.

8 18. However, Defendant vehemently opposed these unpaid wage claims both on the
9 merits and as to the propriety of pursuing them on a class and representative PAGA basis. For
10 example, Defendant argued that it maintained lawful policies to compensate employees for all
11 time worked and that any ruling on these unpaid wage claims would require unwieldy
12 individualized assessments that were not proper for class and representative treatment. Defendant
13 also argued that it had compliant meal and rest break policies and practices, and that issues related
14 to any denial of proper breaks would have to be resolved on an individualized basis. As for the
15 waiting time penalty claims, Defendant argued that these would fail along with the underlying
16 wage claims – and, even if the wage claims succeeded, Defendant argued it was entitled to the
17 “good faith” defense and that Plaintiff would be unable to show these violations were “willful.”

18 19. Plaintiff also alleged various PAGA claims arising out of the claimed violations
19 mentioned above. However, Defendant argued that these types of “derivative” claims have no
20 merit.

21 20. Defendant's time keeping records, payroll records, and review other relevant data
22 points, were analyzed to come up with a damage model to determine Defendant's exposure for the
23 classes.

24 21. Although Plaintiff's Counsel believes the class claims are strong, Plaintiff's
25 Counsel also recognize that if the litigation had continued, they may well have encountered
26 significant legal and factual hurdles that could have prevented the Class from obtaining any
27 recovery.

28 22. To be sure, a number of cases have found wage and hours actions to be especially

1 amenable to class resolution. However, some courts have gone the other way, finding that some of
2 the very claims at issue here-especially meal period and rest period violations-were not suitable for
3 class adjudication because they raised too many individualized issues. *See Duran v. US. Bank*
4 *National Association*, 59 Cal. 4th 1, 31 (2014) (reversing a verdict from a class trial); *Ali v. US.A.*
5 *Cab Ltd.*, 176 Cal. App. 4th 1333, 1341 (2009) (affirming denial of certification because
6 employees' declarations attesting to having taken meal and rest periods demonstrated that
7 individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, 2013
8 U.S. Dist. LEXIS 137792, at *30-41 (C.D. Cal. Sept. 20, 2013) (following *Brinker* and denying
9 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
10 policy); *Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist. LEXIS 65328 (C.D. Cal. Apr. 18, 2012) (
11 denying motion to certify meal and rest period classes based on employer's practice of
12 understaffing and overworking employees); *Gonzalez v. Officemax NA.*, 2012 U.S. Dist. LEXIS
13 163853 (C.D. Cal. Nov. 5, 2012) (same); *Brown v. Fed. Express Corp.*, 249 F.R.D.580, 587-88
14 (C.D. Cal. 2008) (denying certification of driver meal and rest period claims based on the
15 predominance of individual issues); *Kenny v. Supercuts, Inc.*, 252 F.R.D. 64 I, 645 (N.D. Cal.
16 2008) (denying certification on meal periods claim); *Blackwell v. Skywest Airlines, Inc.*, 245
17 F.R.D. 453, 467-68 (S.D. Cal. 2007) (declining to certify class action because individual issues
18 predominated when different employee stations provided different practices with respect to meal
19 periods).

20 23. Some courts have denied certification even when an employer's policies are
21 unlawful on their face. For instance, in *Ordonez v. Radio Shack, Inc.*, 2013 U.S. Dist. LEXIS
22 7868, *35-41 (C.D. Cal. Jan. 17, 2013), the court denied certification even though the plaintiff
23 submitted evidence of a facially unlawful policy regarding rest breaks. The *Ordonez* court
24 concluded that the predominance and superiority elements were not met based on the employer's
25 presentation of anecdotal evidence of lawful compliance notwithstanding the unlawful policy. *Id.*
26 at *38-40. And it should be underscored that that claims which are amendable to certification can
27 be disposed of by motion for summary judgment. *See Loudv. Eden Med. Ctr.*, 2013 U.S. Dist.
28 LEXIS 122873, **36-53 (N.D. Cal. Aug. 28, 2013) (granting summary judgment on wage

1 statement claim because plaintiff could not show injury due to defects and that incorrect wage
2 information is not willful).

3 24. As the above examples illustrate, the prospect of certifying a wage and hour action
4 is always uncertain, and the risk of being denied class certification militates in favor of settlement.
5 A denial of class certification effectively forecloses continued litigation, as neither the individual
6 nor his or her attorney will have any incentive to proceed with an individual case when such small
7 claims are at stake. *See In re Baycol Cases I & II*, 51 Cal. 4th 751, 758 (2011) (explaining that a
8 dismissal of class claims is effectively the "death knell" of the case, despite survival of individual
9 claims). In other words, for cases where individual damages are relatively small, denial of class
10 certification results in a near-complete loss for Plaintiffs as well as no recovery for the employees,
11 who are shut out of the action. Thus, if the putative Class had not been certified, the value of
12 Plaintiffs' case would have been reduced to a fraction of the value of this Settlement; indeed,
13 Defendant would likely have offered no money to settle the class-wide claims if certification had
14 been denied.

15 25. Finally, early resolutions save time and money that would otherwise go to
16 litigation. Parties' resources, as well as the Court's, will be further taxed by continued litigation.
17 And if this action had settled following additional litigation, the settlement amount would likely
18 have taken into account the additional costs incurred, and there may have been less available for
19 Class Members. Cost savings is one reason why California policy strongly favors early settlement.
20 *See Nemy v. Regents of University of California*, 3 Cal. 4th 273, 277 (1992) (explaining the high
21 value placed on settlements and observing that "[s]ettlement is perhaps most efficient the earlier
22 the settlement comes in the litigation continuum."). This concern also supports settlement.

23 26. Further, beyond the risk of an adverse ruling on the merits or certification, Class
24 Counsel considered the fact that continued litigation would likely take years and would be
25 extremely expensive given the breadth and complexity of the claims. In this case, post-trial and
26 appellate proceedings are likely to occur, which will surely drag the case far into the future even
27 with a positive trial result. When facing a distant and unsure resolution of the allegations in this
28 action, the swift, sure and substantial Settlement is all the more reasonable. Avoiding such costly

1 litigation in favor of more immediate benefits to the Class was a consideration favoring settlement.
2 Given these realities, it is highly likely that the future expense of this litigation, and its likely
3 duration if the settlement is not approved, would be significant and weigh heavily in favor of
4 approval of this settlement.

5 27. The GSA is well within the acceptable range of reasonableness for the claims of the
6 Settlement Class Members. Based upon detailed data obtained through informal discovery and
7 information exchanges, there are through the date of mediation approximately: (1) 266 class
8 members who worked approximately 13,000 weekly pay periods. The Pay Periods for this class
9 are weekly.

10 28. Plaintiff contends that his strongest claim was for wage statement violations. As
11 such, the maximum potential damages under § 226(e) was \$340,000 for approximately 4,413 pay
12 periods in the wage statement period. But this maximum figure ignores several risks and defenses.
13 For example, Defendant raised many defenses, including that: (a) all required information under §
14 226(a) could be “easily ascertained” from the wage statements and thus there were no violations,
15 (b) the omissions, if any, were not “knowing and intentional” so no liability would attach, (c)
16 Plaintiff and the Class would be unable to show the requisite “injury” to impose liability, and (d)
17 even if there were violations, Defendant modified its wage statements during the liability period,
18 thus reducing the number of potential violations. These defenses all went to the merits, not to
19 defeating class certification. Thus, Plaintiff did not assign a risk at the class certification stage but
20 applied a 50% risk on the merits, resulting in risk-adjusted value for the wage statement claim of
21 \$170,000.

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

27 30. Plaintiff then valued the various unpaid wage claims at approximately \$209,610.
28 The off the clock claim was valued at \$193,953 for approximately ½ hour of unpaid time per

1 workweek. The regular rate claim for sick pay was valued at \$11,568. The regular rate claim for
2 overtime was valued at \$4,089. However, Defendant raised a host of strong defenses both as to
3 class certification and on the merits. For instance, Defendant argued that it maintained a policy
4 which required the Class Members to keep accurate records for the beginning and end of the
5 workday, and that any “off-the-clock” claims would require exactly the type of individualized
6 assessments that preclude class certification. Because of these strong defenses and substantial risk
7 in continued litigation, Plaintiff assigned a 25% risk at class certification and another 25% risk on
8 the merits, leading to a risk-adjusted value for the wage claims of \$104,805.

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

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

24 33. The PAGA penalties were valued at approximately \$197,500 (3,952 pay periods X
25 \$50 per Pay Period). The \$50 per pay period was adjusted from the \$200 to account for the risks
26 discussed herein.

27 34. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff
28 estimates the risk-adjusted class recovery as follows:

1	•	Wage Statement Claims	\$	170,000
2	•	Unpaid Wage Claims	\$	104,805
3	•	Waiting Time Penalty Claims	\$	274,292
4	•	Meal and Rest Break Claims	\$	129,372
5	•	Unreimbursed Expense Claims	\$	48,750
6	•	PAGA	\$	197,500
7	•	Total Risk Adjusted Penalties and Damages	\$	924,719

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

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

37. The PAGA members who worked during the PAGA period will be paid a PAGA

1 Payment based upon a pro rata share of the number of pay periods each PAGA member worked
2 compared to the total pay periods worked by all PAGA group members during the PAGA period
3 of approximately 3,952. As a result, there are approximately 79 PAGA members who will each
4 receive approximately \$158.22 per PAGA member.

5 38. The Class Representative has provided extensive supporting documents and
6 assisted Class Counsel in developing information necessary to litigate and settle this case.
7 Plaintiff also conducted record review and consultation with counsel in preparation for mediation,
8 and to assist in evaluating and proving the claims. The settlement provides for a Payment to be
9 paid to the Class Representative in the amount of \$7,500.00 subject to Court approval. The
10 purpose is to compensate the Class Representatives an additional incentive payment, taking into
11 consideration the risks, time, effort and expenses incurred in coming forward to provide invaluable
12 information and negotiate and litigate this matter on behalf of all Settlement Class Members who
13 otherwise, would probably not file their own individual claims to recover what may be relatively
14 low damages. Further, the Payment of \$7,500.00 as an Service Award to the Class Representative
15 is a very fair and justified as part of the Settlement based on the risks Plaintiff has taken and
16 benefits conferred upon the Settlement Class.

17 39. Class certification, as requested by the Parties for the purposes of the settlement
18 only, should be granted because Plaintiff allege that the proposed Settlement Class Members'
19 claims all stem from the same alleged conduct, i.e., that Defendant violated California law because
20 they: (1) failure to pay overtime wages, (2) failure to provide meal periods, (3) failure to provide
21 rest breaks, (4) failure to pay final wages, (5) failure to pay timely wages, (6) failure to provide
22 accurate wage statements, (7) failure to reimburse for business expenses, (8) failure to pay vested
23 vacation pay, (9) failure to pay reporting time pay, and (10) unfair and unlawful competition
24 pursuant to Business and Professions Code §17200 et seq. In addition to compensatory damages,
25 Plaintiff and the Settlement Class seek attorneys' fees, costs, and interest. Under these specific
26 circumstances, the commonality requirement for class certification is satisfied. The typicality
27 requirement for certification is also met as it is alleged that the Class Representatives and the
28 proposed Settlement Class were subjected to similar violations based upon similar conduct,

1 policies and practices of the Defendant regardless of their duties.

2 40. The adequacy requirement for certification is also met. The Class Representative
3 and Class Counsel have prosecuted this action vigorously on behalf of the Settlement Class. The
4 Class Representative will receive a reasonable award for the time and effort spent assisting Class
5 counsel with factual issues surrounding the case. Other than this specific payment to the Class
6 Representative, all of the Settlement Class Members will receive a proportionate share of the
7 NSA, as detailed above provided they do not exclude themselves. Further, all PAGA Members
8 during the PAGA Period will receive their pro rata share of PAGA Penalties. As a result, there is
9 no conflict of interest between the Class Representative and the Settlement Class Members.
10 Further, the NSA will be fairly distributed among Participating Class Members, and no
11 “settlement allocation” questions will be raised.

12 41. Common questions of law and fact predominate over individual questions and
13 class-wide treatment of this dispute is superior to individual litigation. Plaintiff alleges that the
14 proposed Settlement Classes in this case are sufficiently cohesive, since all Settlement Class
15 Members share a common nucleus of facts and potential legal remedies, and since all of the
16 Settlement Class Members and the Class Representative seek compensation for unpaid wages and
17 other civil and statutory penalties from Defendant for the allegations described in the Complaints.
18 Common questions about compensation or lack thereof for work performed by Settlement Class
19 Members and the Settlement Class Members’ potential legal remedies are identical. The
20 alternative method of resolution is individual claims for relatively small amounts of damages, but
21 individual cases would be uneconomical for potential plaintiffs because the cost of litigation
22 dwarfs potential recovery. Therefore, a class action is the preferred method of resolution.

23 42. The class notice plan here calls for the Settlement APEX Class Action Settlement
24 Administrators (“APEX”) to mail a Notice of Class Action settlement to all known and reasonably
25 ascertainable Settlement Class Members based on Defendant’s records. Further, the Settlement
26 Administrator will conduct a skip-trace and use all reasonable efforts to locate Settlement Class
27 Members and will re-mail all returned envelopes with forwarding addresses. The notice is
28 consistent with the class certification notices approved by numerous state and federal courts, and

1 is the best notice practicable under circumstances of this case. The proposed Settlement Class
2 Members are ascertainable because all of the Settlement Class Members have worked for
3 Defendant during the Class Periods and can be identified through Defendant's records.

4 43. APEX is experienced in administering class action settlements and has provided a
5 flat-fee proposal to administer this settlement for \$6,500.00.

6 44. The Notice also fulfills the neutrality requirement. It summarizes the proceedings
7 to date and the terms and conditions of the Settlement in an informative and coherent manner, and
8 is accurate, objective, and understandable to Settlement Class Members, as is required under
9 prevailing precedent. The Notice clearly states the Settlement does not constitute an admission of
10 liability by Defendant and recognizes the Court has not ruled on the merits. It also states the final
11 settlement approval decision has yet to be made. The Notice also clearly instructs the Settlement
12 Class Members on how to object or exclude themselves from the Settlement. Therefore,
13 Settlement Class Members will have the option to participate or exclude themselves simply by
14 mailing a request to exclude themselves. The Settlement Class consists of non-exempt employees
15 who speak English. Thus, the Notice of Class Action is drafted in a manner that is likely to be
16 readily understood by the Settlement Class. Accordingly, the Notice complies with the standards
17 of fairness, completeness and neutrality required of a Notice of Class Action Settlement. The
18 Notice therefore is neutral, objective and understandable.

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

24 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.: 30-
25 2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium
26 wages for meal period and rest periods and resultant penalties. Class Notice pending.

27 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT- Case
28 No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for mis-

1 classification of insurance claims adjusters employed by Gallagher Bassett, a third
2 party administrator (TPA) in the State of California. Certification granted. Plaintiffs'
3 counsel co-lead counsel. Case settled, Final Approval granted, no objections and funds
4 fully distributed.

5 c. *Dao v. 3M Company*, et al. USDC, CENTRAL DISTRICT, Case No. CV-08-
6 04554. Wage and Hour Class Action case seeking past wages for "off the clock",
7 overtime and meal and rest break violations for production workers in the State of
8 California. Plaintiffs' Counsel appointed as Lead Counsel. Case settled, Final
9 Approval granted, no objections and funds fully distributed.

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

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

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

25 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
26 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for
27 overtime, meal and rest breaks violations for production employees in the State of
28 California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval

1 granted, no objections and funds fully distributed.

2 h. *Acosta v. Fleetwood Travel Trailers of California, Inc.*, et al., Riverside County
3 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past
4 wages for overtime, meal and rest break violations for production employees in the
5 State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled,
6 Final Approval granted, no objections and funds fully distributed.

7 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
8 Wage and Hour Class Action seeking past wages for unlawful deductions, meal and
9 rest break violations for restaurant employees in the State of California. Plaintiffs'
10 counsel appointed as lead counsel. Case settled, Final Approval granted and funds
11 fully distributed.

12 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case
13 No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal
14 and rest break violations for security officers in the State of California. Plaintiffs'
15 counsel appointed as co-lead counsel. Case settled, Final Approval granted, no
16 objections and funds fully distributed.

17 k. *Martinez v. Securitas Security Services USA*, et al., Santa Clara Superior Court,
18 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action
19 seeking past wages for meal and rest break violations for security officers employed by
20 defendant in the State of California. Plaintiffs' counsel and co-counsel. Case settled,
21 Final Approval granted and funds fully distributed.

22 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc.* et al., Riverside Superior Court,
23 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime,
24 meal and rest break violations for housekeepers employed by defendant in the State of
25 California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval
26 granted, no objections and funds fully distributed.

27 m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
28 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and

1 rest period violations for non-exempt employees employed by defendant in the state of
2 California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff has
3 petitioned the Court for Lead Counsel.

4 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
5 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages
6 for field and branch employees of defendant in the State of California. Plaintiffs'
7 counsel appointed as lead counsel. Case settled and awaiting Final Approval.

8 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
9 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
10 employees of defendant in the State of California. Plaintiffs' counsel appointed as lead
11 counsel. Case settled, Final Approval granted, no objections and funds fully
12 distributed.

13 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
14 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
15 break violations for security guards employed by defendant in the State of California.
16 Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no
17 objections and funds fully distributed.

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

23 r. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case
24 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest
25 break violations for restaurant employees employed by defendant in the State of
26 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
27 Approval granted, no objections and funds fully distributed.

28 s. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC

1 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
2 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of
3 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
4 Approval granted, no objections and funds fully distributed.

5 t. Burns v. Gymboree Operations, Inc., et al., San Francisco Superior Court, Case No.
6 CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest
7 break violations for retail employees employed by defendant in the State of California.
8 Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no
9 objections and funds fully distributed.

10 u. Willems v. Diedrich Coffee, Inc., et al., Orange County Superior Court, Case No.
11 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-
12 classification of managers employed by Defendant in the State of California.
13 Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no
14 objections and funds fully distributed.

15 v. Davila, et al. v. Beckman Coulter, Inc., et al., Orange County Superior Court, Case
16 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal
17 and rest break violations for production workers employed by defendant in the State of
18 California. Plaintiffs' counsel appointed lead counsel. Case settled; final approval
19 granted; no objections and funds fully distributed.

20 w. Perez v. Naked Juice Company of Glendora, Inc., Los Angeles Superior Court,
21 Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime,
22 meal and rest period violations for production employees employed by defendant in the
23 State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final
24 Approval granted, no objections and funds fully distributed.

25 46. Here, the Parties' agreement to pay Class Counsel Fees of 1/3 (33.33333%) of the
26 GSA is reasonable. My firm and I have been the only counsel to represent Plaintiff and the
27 Settlement Class in this matter, and we have borne the entire risk and cost of this litigation on a
28 pure contingency fee basis. The legal issues raised drew significantly upon my experience and the

1 extensive review and analysis of documents and information by me and others at my firm and our
2 co counsel. In a complex action such as this, the proposed attorneys' fees are, at the very least, on
3 the low side of the market rate for contingency fees.

4 47. At this juncture, with the addition of more hours due to the administration of the
5 the Settlement by Class Counsel, administration of the Settlement, and preparation for final
6 approval, counsel for plaintiff will provide a detailed analysis of its time in advance of the final
7 approval hearing. Plaintiff's counsel will file a motion for attorneys' fees and costs to be heard
8 concurrently with the motion for final approval in accordance with the terms of the settlement
9 agreement.

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

23 I declare under penalty of perjury that the foregoing is true and correct. Executed on
24 August 1, 2023 at Irvine, California.

25 
26 James R. Hawkins

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EXHIBIT A

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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 Dylon 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.

///

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.

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

4 (a) any and all claims, wages, penalties, interest, debts, demands, rights, liabilities,
5 costs, compensation, damages, injunctive and/or declaratory relief, attorneys’ fees, actions,
6 and/or causes of action that were pleaded or could have been pleaded based upon the factual
7 allegations set forth by Plaintiff in the Complaint filed in this Action and arising at any time
8 during the Class Period, including but not limited to all claims under the California Labor Code
9 for unpaid minimum wages, off-the-clock work violations, failure to pay overtime, failure to pay
10 vesting vacation pay, failure to pay reporting time pay, failure to pay all wages earned and owed
11 during employment, failure to provide meal periods, failure to provide rest periods,
12 unreimbursed business expenses, wage statement violations, interest, penalties, and attorneys’
13 fees, waiting time penalties, withholding from wages and the related provisions of the Labor
14 Code including Labor Code §§ 200-204, 208, 210, 216, 218.6, 226, 226.3 , 226.7, 227.3, 510,
15 512, 512.5, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804,
16 derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims
17 under the governing Industrial Welfare Commission Occupational Wage Orders, California Code
of Regulations, and Fair Labor Standards Act; and

18 (b) as to any Class Member who cashes their Settlement Payment, the Settlement
19 Administrator shall include language on the Settlement Payments that informs the Class
20 Members that the signing and negotiation of that check shall serve as the Class Member’s
21 consent to join the Action for purposes of releasing all claims arising under the Fair Labor
22 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.

23 31. “Released Parties” means Defendant and its former, present, and future direct
24 and/or indirect owners, dba’s, parents, subsidiaries, affiliated and related companies, divisions,
25 successors, predecessors, or assigns, and past, current, and future employees, attorneys, officers,
26 directors, shareholders, owners, agents, trustees, accountants, auditors, consultants, insurers and
27 reinsurers, heirs, executors, administrators, predecessors, successors or assigns of any of the
28 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 11, 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

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

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

13 C. **Terms of Settlement**

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

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

23 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the Gross
24 Settlement Amount less the court-approved Attorneys’ Fees and Costs Award, the court-
25 approved Service Payment to the Class Representative, the court-approved Settlement
26 Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys’ Fees and Costs

27 Award, Service Payment to the Class Representative, or Settlement Administration Costs,
28 or either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement
Amount shall be increased or decreased accordingly.

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

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

(d) Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: One-quarter (25%) 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 \$6500 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

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

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

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

7 (d) Preliminarily approving this Settlement; and

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

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

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

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

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

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

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

27 81. Final Judgment. The Settlement Administrator shall give the Participating Class
28 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.

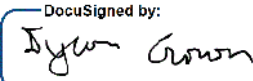
18 109. **Proportional Increase to Gross Settlement Amount:** The Gross Settlement
19 Amount was calculated with, and is premised on, the understanding that Class Members worked
20 approximately 13,000 work weeks during the Class Period. If the actual number of workweeks
21 eligible to participate in 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 ///

///

1 Dated: July 27, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

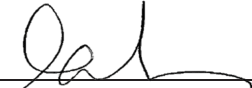
2 DocuSigned by:
3 
4 B00CECADF2E5429...
5 Dylan Cronin

CLASS COUNSEL:

6
7 Dated: July 27, 2023

JAMES HAWKINS APLC

8
9 BY:


Gregory Mauro
Attorneys for Plaintiff

10
11 Dated: July __, 2023

DEFENDANT:

12 FFE TRANSPORTATION SERVICES, INC.

13
14
15
16 By:

17 Title:

18
19 Dated: July __, 2023

GREEN & ROBERTS

20
21 BY:

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

1 Dated: July __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3 _____
4 Dylan Cronon

5
6 **CLASS COUNSEL:**

7 Dated: July __, 2023

JAMES HAWKINS APLC

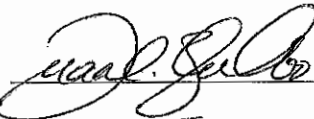
8
9 BY: _____

Gregory Mauro
Attorneys for Plaintiff

10
11 Dated: July 18, 2023

DEFENDANT:

12 FFE TRANSPORTATION SERVICES, INC.

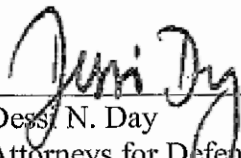
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14 

15 By: Traci Bilbo

16 Title: VP of Human Resources

17
18 Dated: July 28, 2023

GREEN & ROBERTS

19
20 BY: 

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

EXHIBIT B

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

DYLON CRONON v. FFE TRANSPORTATION SERVICES, INC., et al.

Superior Court of the State of California, County of San Joaquin

Case No. STK-CV-UOE-2022-6572

To: all current and former non-exempt, non-driver employees who were employed by FFE Transportation Services, Inc. (“FFE”), at any time between July 29, 2018, and August 10, 2023, or the date of preliminary approval of the settlement, whichever is sooner (the “Class”):

THIS NOTICE is of a proposed settlement of the above-referenced class action and representative action lawsuit (the “Lawsuit”), and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this Lawsuit and PAGA Action. The Court will conduct a hearing on [INSERT DATE], 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and Aggrieved Employee in the above Lawsuit and PAGA Action. Under the terms of the proposed settlement, you are estimated to receive approximately [**\$INSERT AMOUNT**] as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of eligible pay periods you worked for FFE in California between July 29, 2018, through the date the Court preliminarily approves of the settlement, or August 10, 2023, whichever is sooner (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives Final Approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the released class and PAGA claims described in Section IV under the provisions titled “Release of Class Claims” and “Release of PAGA Claims.”
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [INSERT DATE] (see Section V(B) for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) neither receive any settlement payment for the Class Claims nor release any Class Claims as set forth in Section IV, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection by [INSERT DATE] (see Section V(C) for more details on how to object).
DISPUTE YOUR NUMBER OF PAY PERIODS CREDITED	If you believe that the number of pay periods that you are credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited pay periods). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your Pay Period calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Cronon v. FFE Transportation Services, Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2022-6572. (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

FFE’s records show that you were employed as a non-exempt employee in California at some point between July 29, 2018, through the date the Court preliminarily approves of the settlement, or August 10, 2023, whichever is sooner (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by FFE as a non-exempt, non-driver employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit and PAGA Action, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit, PAGA Action and the Settlement.

II. What is this lawsuit about?

On July 29, 2022, Plaintiff and Class Representative Dylan Cronon (“Plaintiff” or “Class Representative”), through his attorneys (“Class Counsel”), filed a class action complaint against FFE for alleged wage and hour violations on behalf of all current and former non-exempt employees of FFE who worked in California at any time since July 29, 2018. The Lawsuit alleges that FFE violated various Labor Code sections by failing to pay wages (including overtime) for all hours worked, failing to provide proper meal breaks, failing to provide paid rest breaks, failing to reimburse for business expenses, failing to timely pay final wages, failing to provide accurate wage statements, failing to pay vested vacation pay, and failing to pay reporting time during the Claim Period. The Lawsuit also sought equitable relief under the Unfair Competition Law. All of these claims are called the “Class Claims.” On October 5, 2022, Plaintiff also filed a separate lawsuit on behalf of all aggrieved employees for civil penalties for violations of the Labor Code pursuant to PAGA. The civil penalty claims are called “PAGA Action” and the relevant period for PAGA claims is October 5, 2021, through the date the Court preliminarily approves of the settlement, or August 10, 2023, whichever is sooner. (“PAGA Period”).

FFE has denied, and continues to deny, the factual and legal allegations in the Lawsuit and the PAGA Action and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, FFE is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. FFE has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, FFE and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit and PAGA Action on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to FFE, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by FFE, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, FFE will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the attorneys representing The Parties?

<u>Attorneys for Plaintiff and Class Members:</u>	<u>Attorneys for Defendant:</u>
James R. Hawkins Gregory Mauro <i>James@jameshawkinsaplc.com</i> <i>Greg@jameshawkinsaplc.com</i> James Hawkins APLC 9880 Research Drive, Suite 200 Irvine, CA 92618 Tel.: (949) 387-7200	Dessi Day <i>dday@greeneroberts.com</i> Greene & Roberts 402 West Broadway, Suite 1025 San Diego, CA 92101 Tel: (619) 398-3400

IV. What are the terms of the Settlement?

On [INSERT DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by FFE in California at any time from July 29, 2018, through the date the Court preliminarily approves of the settlement, or August 10, 2023, whichever is sooner (the “Settlement Class” or “Class Members”) and approved a representative class comprised of all non-exempt, non-driver employed by FFE in California at any time from July 29, 2018, through the date the Court preliminarily approves of the settlement, or August 10, 2023, whichever is sooner (“Aggrieved Employees”). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become “Participating Class Members” and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against FFE.

Without admitting any wrongdoing, FFE has agreed to pay \$475,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit and PAGA Action. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved Apex Class Action Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$[INSERT AMOUNT] will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

<u>Settlement Administrator:</u>
Apex Class Action Administrators 20371 Irvine Ave. Suite 110 Newport Beach, CA 92660 Tel: 800-355-0700

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$50,000 of the Gross Settlement Amount will be allocated to Plaintiff’s PAGA Claims. Of this amount, \$37,500 will be paid to the California Labor Workforce and Development Agency (“LWDA”) in satisfaction of the claims for civil penalties under PAGA, and the remaining \$12,500 will be divided between all Aggrieved Employees based on the number of pay periods worked during the PAGA Period. You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid pursuant to PAGA. Aggrieved Employees include all current and former non-exempt, non-driver employees who were employed in California by FFE at any time during the PAGA Period. You will receive your allocated portion of this payment and will be bound by the release of all such PAGA Claims without regard to your selected option discussed in Section V, below.

Service Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative a Service Payment in the amount of \$7,500 to compensate him for service and extra work provided on behalf of the Class Members and

in exchange for a general release of claims. The Class Representative also will receive his individual share of the Settlement as a Class Member.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third (\$158,333.33) of the common fund Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit and PAGA Action.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$[INSERT AMOUNT]. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of Pay Periods a Settlement Class Member is credited with working during the Class Period. A Class Member is credited with one Pay Period Worked each time the Class Member works at least one shift during the Class Period as a truck driver residing in California. Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Pay Periods Worked by all Settlement Class Members into the Net Settlement Amount to determine a per "Pay Period Value." The Pay Period Value will be multiplied by the number of Pay Periods Worked by each Settlement Class Member during the Class Period to determine the "Individual Settlement Payment," prior to legal deductions/withholdings, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

For each Settlement Class Member, the Pay Periods Worked at FFE during the Class Period will be calculated from FFE's records. FFE's records indicate that you worked for **[TOTAL PAY PERIODS] Pay Periods** while employed by FFE in California during the Class Period of July 29, 2018, through the date the Court preliminarily approves of the settlement, or August 10, 2023, whichever is sooner. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before [INSERT DATE]_____, 2023, with documentation to establish the number of eligible Pay Periods you claim to have actually worked for FFE while employed in California between July 29, 2018, and through the date the Court preliminarily approves of the settlement, or August 10, 2023, whichever is sooner. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Aggrieved Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA civil penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

Allocation and Taxes. One-quarter (25%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining three-quarters (75%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, FFE and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims and shall hold harmless FFE from any claim or liability for taxes, penalties, or interest arising as a result of the Class Members' and Aggrieved Employees' failure to pay their share of any

taxes. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Upon the final approval of the Settlement by the Court, Plaintiff and all Class Members who do not submit a valid opt-out/request for exclusion will fully release and discharge Defendant and its past, present and future officers, directors, owners, shareholders, employees, agents, principals, heirs, trustees, executors, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, dba's, subsidiaries, divisions, affiliates, attorneys, administrators, predecessors, successors and assigns (the "Released Parties") from any and all claims stated in the Complaint and those that could have been stated based upon the facts alleged in the Complaint, including but not limited to the following "Released Class Claims":

- (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 pay overtime, failure to pay vesting vacation pay, failure to pay reporting time pay, failure to pay all wages earned and owed during employment, 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;
- (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.
- (c) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA and any Complaint in this matter (i.e., the PAGA Released Claims).

The time period governing these Released Class Claims shall be at any time from July 29, 2018, through the date the Court preliminarily approves of the settlement, or August 10, 2023, whichever is sooner ("Class Period").

Release of PAGA Claims. Also upon the Court's final approval of the Settlement, Plaintiff—in his individual capacity and on behalf of the State of California and the LWDA—and all Aggrieved Employees shall completely release and discharge the Released Parties of all PAGA claims that Plaintiff alleged or could have 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 to provide rest periods, (d) failure to pay all wages earned and owed upon separation, (e) failure to pay all wages earned and owed during employment, (f) failure to provide accurate itemized wage statements, (g) failure to reimburse necessary business expenses, (h) failure to pay vesting vacation pay, (i) failure to pay reporting time pay, and (j) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the operative complaint. These released claims and damages are hereinafter referred to as "Released PAGA Claims." The time period governing the PAGA Released Claims shall be any time from October 5, 2021, through the date the Court preliminarily approves of the settlement, or August 10, 2023, whichever is sooner ("PAGA Period").

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section 206.5 of the Labor Code provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Pay Periods Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by FFE, who will not take any adverse employment action against you based on your participation or decision not to participate in this Settlement.

- B. **Exclude Yourself from the Class Claims in the Settlement.** If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [INSERT DATE]_____, 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE FFE TRANSPORTATION SERVICES, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, Apex Class Action Administrators 20371 Irvine Ave. Suite 110 Newport Beach, CA 92660, **postmarked no later than [INSERT DATE]**. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, your address, your telephone number, the last four digits of your social security number or your date of birth, your dates of employment at FFE, the case name and number, the name and address of your attorney(s) if you are represented, your signature, and each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], **by no later than [INSERT ADDRESS]**. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. **You need not object to the Settlement if you only dispute the number of Pay Periods Worked. To dispute the number of Pay Periods Worked, please refer to the directions provided under the provision entitled “Calculation of Individual Settlement Payments to Class Members” in Section IV of this Notice.**

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [INSERT DATE], at [insert time] in Department 10 C of the San Joaquin County Superior Court, located at 180 E. Weber Ave., Stockton, CA 95202. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [INSERT DATE]. All

objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit and PAGA Action regarding the alleged violations of wage and hour laws. If you were employed by FFE in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the class claims in this Lawsuit, described above in Section IV under the provision titled “Release of Class Claims.” All Aggrieved Employees will be deemed to have entered into a release of the PAGA Claims, described above in Section IV under the provision titled “Release of PAGA Claims.” If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, the Class Counsel’s request for attorneys’ fees and reimbursement of documented litigation costs, and the Service Payment to the Class Representative on [INSERT DATE] at [INSERT TIME] in Department 10C of the San Joaquin County Superior Court, located at 180 E. Weber Ave., Stockton, CA 95202.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit, PAGA Action and the Settlement. For more information, you may inspect the Court’s files and the Class Action Settlement Agreement at the Office of the Clerk, San Joaquin County Superior Court, located at 180 E. Weber Ave., Stockton, CA 95202, during regular court hours. You may contact the Court by visiting <https://www.sjcourts.org/>. You may also contact the Settlement Administrator using the contact information listed above under Section IV for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Class Claims is [INSERT DATE]. The deadline for mailing an objection to the Settlement Administrator is [INSERT DATE].

These deadlines will be strictly enforced. To be considered timely, any Requests for Exclusion and objections to the Settlement must be postmarked by the above-stated deadlines. Any Requests for Exclusion and objections to the Settlement that are not postmarked on or before these deadlines will be deemed untimely and disregarded.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**