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NATALIE SPENCER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

NATALIE SPENCER, on behalf of herself and all others similarly situated, Plaintiff, vs. BNSF RAILWAY COMPANY; and DOES 1 through 100, inclusive, Defendants.	Case No. C25-00652 **CLASS ACTION** *[Assigned for all purposes to the Hon. Benjamin T. Reyes II, Dept. 16]* **DECLARATION OF TUVIA KOROBKIN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: TBD by the Court Time: TBD by the Court Dept.: 16 Action Filed: March 7, 2025 Trial Date: None Set

I, TUVIA KOROBKIN, declare as follows:

1. I am an attorney at Marquee Law Group, A Professional Corporation, attorneys of record for Plaintiff Natalie Spencer ("Plaintiff") and the proposed Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2009 graduate of the UCLA School of Law. I was admitted to the California State Bar in December 2009 after passing the bar exam on my first attempt. Since that time, I have practiced almost exclusively in the area of employment litigation. From May 2010 to May 2014, I worked as an associate at the employment law firm of Eisenberg & Associates in Los Angeles. From May 2014 to January 2016, I worked as an associate at the employment law firm of Setareh Law Group in Beverly Hills. The vast majority of my work at both Eisenberg & Associates and Setareh Law Group focused on representing employees in wage and hour and wrongful termination actions, including wage and hour class actions. Although non-exhaustive, the types of work I performed at those firms included: conducting client intakes; performing pre-filing research and analysis; drafting complaints; attending court hearings; corresponding with opposing counsel; drafting and responding to written discovery; taking and defending depositions; analyzing payroll and timekeeping records and employee handbooks; drafting and opposing a variety of motions including motions for summary judgment, motions for remand, demurrers and motions to dismiss, motions to compel, motions to quash, and motions for class certification; drafting mediation briefs and attending mediations; drafting long-form settlement agreements; drafting motions for preliminary and final settlement approval; and overseeing the claims and/or opt-out processes. I also drafted appellate briefs for the California Court of Appeal and the Ninth Circuit Court of Appeals, and argued before the California Court of Appeal, all in connection with employment matters.

3. In February 2016 I joined Haines Law Group, APC (HLG) in El Segundo, California, as an associate attorney. In December 2019 I was promoted to Partner, a position I held until I resigned from HLG in July 2022. While at HLG, I performed many of the same duties

identified in the preceding paragraph, and I also managed junior and mid-level associates. During my tenure with HLG I handled over 100 wage and hour class actions and Private Attorneys General Act ("PAGA") actions, resulting in more than $100 million in total settlements on behalf of California workers.

4. In July 2022 I joined Abramson Labor Group (ALG) as Senior Counsel in the firm's Class Action Department, where I grew the Class Action Department to approximately 80 active wage and hour class and PAGA actions throughout California. In addition to managing the caseload and day-to-day operations of the Class Action Department, I supervised associate attorneys and performed many of the same duties described in the two prior paragraphs.

5. In March 2024 I joined Marquee Law Group as Senior Counsel and Chair of the Class Action Department. I currently manage and play an active role in approximately 50 active wage and hour class actions and PAGA actions throughout California, and perform many of the same job duties as I performed in my prior roles, in addition to supervising other attorneys' work on those cases.

6. The following is a non-exhaustive list of wage and hour class action settlements in which I was appointed as class counsel and that have received final approval: *Bellinghausen v. Tractor Supply Company,* Case No. 3:13-cv-02377-JSC, U.S. District Court, Northern District of California, Judge Jacqueline Scott Corley presiding (granted final approval of settlement on behalf of retail employees involving claims for failure to provide meal and rest periods, failure to pay overtime, and other claims); *Montgomery v. Del Monte Corp.,* et al, Case No. 13C0204, Kings County Superior Court, Judge James LaPorte presiding (granted final approval of settlement on behalf of manufacturing employees involving claims for failure to provide meal and rest periods, failure to pay overtime, and other claims); *Tesla Motors Wage and Hour Litigation,* JCCP 4792, Santa Clara County Superior Court, Judge Peter H. Kirwan presiding (granted final approval of settlement on behalf of automotive factory workers involving claims for failure to pay overtime, failure to provide meal and rest periods, and other claims); *Nable v. TransFirst, LLC*, Case No. 8:15-cv-00891-DOC-JCG, U.S. District Court, Central District of California, District Judge David O. Carter presiding (granted final approval of settlement of hybrid nationwide

FLSA/California Rule 23 class action involving claims for failure to pay overtime, failure to provide meal periods, off-the-clock work, and other claims); *Kostyuk, et al v. Golden State Overnight Delivery Service, Inc*., Case No. RG14727191, Alameda County Superior Court, Honorable Winifred Y. Smith presiding (granted final approval of settlement on behalf of courier drivers involving claims for failure to provide meal periods, failure to pay wages, and other claims); *Leverage, et al v. Traeger Pellet Grills, LLC*, *et al*, Case No. 4: 16-cv-00784-KAW, U.S. District Court for the Northern District of California, Judge Kandis A. Westmore presiding (granted final approval of settlement on behalf of grill demonstrators involving claims for independent contractor misclassification, unpaid minimum wages, unpaid overtime, failure to provide meal periods, failure to authorize and permit rest periods, unlawful deductions from wages, and other claims); *Rendon v. AEP Industries, Inc*, Case No. CIVDS1621981, San Bernardino County Superior Court, Judge David S. Cohn presiding (granted final approval of settlement on behalf of non-exempt employees involving claims for unpaid wages and overtime wages, meal and rest periods, and other claims); *Orozco v. CashCall, Inc*., Case No. 30-2017-00902026-CU-OE-CXC, Orange County Superior Court, Judge Glenda Sanders presiding (granted final approval of settlement on behalf of non-exempt employees involving claims for unpaid wages and overtime wages, meal and rest periods, and other claims); *Barrios v. Providence Hospitality Partners, LLC,* Case No. 56-2016-00484750-CU-OT-VTA, Ventura County Superior Court, Judge Vincent J. O'Neill presiding (granted final approval of settlement on behalf of non-exempt employees involving claims for unpaid wages and overtime wages, meal and rest periods, and other claims); *Rojas v. Shultz Steel Company*, Case No. BC635967, Los Angeles County Superior Court, Judge Kenneth R. Freeman presiding (granted final approval of settlement on behalf of non-exempt employees involving claims for unpaid wages and overtime wages, meal and rest periods, and other claims); *Gooding v. Vita-Mix Corp., et al*, Case No. 2:16-cv-03898-ODW, U.S. District Court for the Central District of California, Judge Otis D. Wright presiding (granted final approval of settlement on behalf of blender demonstrators involving claims for independent contractor misclassification, unpaid wages, failure to provide meal and rest periods, and other claims); *Salas v. Alsco, Inc. dba Steiner Corporation, et al*, Case No. 34-2019-

00266950-CU-OE-GDS, Sacramento County Superior Court, Judge Christopher E. Kreuger presiding (granted final approval of settlement on behalf of linen distribution employees involving claims for failure to pay wages, meal and rest period violations, and other claims).

7. I have also moved to certify and have obtained an order certifying a class action in multiple cases, including *Ontiveros v. Safelite Fulfillment, Inc.,* Case No. CV 15-7118-DMG (RAOx), U.S. District Court, Central District of California, Hon. Dolly M. Gee presiding (certifying six classes of employees for claims including rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, U.S. District Court, Northern District of California, Hon. William H. Alsup presiding (certifying three classes of employees for unlawful wage deduction violations, wage statement violations, and waiting time violations); and *Perez, et al v. Sunbelt Rentals*, Case No. 37-2018-00026405-CU-OE-CTL, San Diego County Superior Court, Hon. Eddie C. Sturgeon (certifying wage statement class).

8. In each year from 2018 through 2025, Thomson Reuters recognized me as a "Rising Star" in Southern California in the area of employment litigation in the annual Super Lawyers magazine. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern California each year. The same publication recognized me as a "Super Lawyer" in Southern California for 2026, again in the field of employment litigation. That honor is awarded to no more than 5% of all attorneys in Southern California each year.

9. F. Shawn Azizollahi is a 2009 graduate of UCLA Law and a founding partner at Marquee Law Group. Mr. Azizollahi has gained extensive experience representing both companies and individuals in transactional and litigation matters, including employment matters, over the course of his career. For the last several years, Mr. Azizollahi's litigation practice has focused on representing plaintiffs in employment matters. Mr. Azizollahi has litigated and/or managed hundreds of employment cases, including a number of class actions. His active participation in this matter was integral in reaching the favorable settlement outcome on behalf of the Settlement Class.

10. Alex Purcell is a 2022 graduate of the USC Gould School of Law and was admitted to the California State Bar in the same year. Before joining Marquee Law Group, Ms. Purcell worked as an associate for Yeroushalmi & Yeroushalmi, where her practice focused on representative actions under California Proposition 65. Ms. Purcell joined Marquee Law Group in February 2024. Since that time, Mr. Purcell has worked exclusively representing plaintiffs in employment matters, including wage and hour claims on both an individual and class action basis. During her tenure with Marquee Law Group, Ms. Purcell has worked on over 75 different California employment matters, including many class actions.

11. As counsel for Plaintiff and the Settlement Class, I have been intimately involved in every aspect of this case since its inception. Based on my extensive experience litigating similar wage and hour class actions, I believe the proposed Settlement is fair, reasonable and adequate for the Settlement Class. A true and correct copy of the Settlement is attached hereto as **Exhibit 1**. A true and correct copy of the proposed Class Notice is attached hereto as **Exhibit 2**.

12. BNSF Railway Company ("BNSF") is a major North American freight railroad company. Plaintiff worked for BNSF as a non-exempt Conductor covered by a collective bargaining agreement, from approximately March 2024 to January 2025, out of BNSF's Richmond, CA location.

13. On March 7, 2025, Plaintiff, through my office, filed this Action, alleging causes of action for failure to reimburse business expenses and for wage statement violations. On May 16, 2025, after sending a PAGA notice to BNSF and the Labor & Workforce Development Agency ("LWDA"), Plaintiff, through my office, filed the operative First Amended Complaint, adding a cause of action under the PAGA.

14. Plaintiff alleges that BNSF failed to accurately report overtime hours and total hours worked on some employee wage statements. BNSF denies Plaintiff's allegations, and avers that Plaintiff's wage statement claim is preempted by federal law including the Railway Labor Act, the Federal Railroad Safety Act, and other federal statutes. BNSF also argues that Plaintiff would not be able to certify a class on this claim or maintain a manageable PAGA action on her theory, due to, *inter alia*, arbitration provisions contained in the relevant CBAs that would

preclude class certification, as well as individualized inquiries that would preclude a manageable claim.

15. Plaintiff also alleges that BNSF failed to indemnify or reimburse employees for the use of their personal cell phones for work purposes. BNSF denies Plaintiff's allegations and denies that it failed to comply with applicable requirements regarding expense reimbursement. BNSF further avers that Plaintiff's reimbursement claim is preempted by federal law, and denies that Plaintiff would be able to certify a class on this claim or maintain a manageable PAGA action on her theory.

16. Plaintiff also alleges a PAGA claim derivative of the above claims. BNSF argues that Plaintiff's derivative PAGA claim fails for the same reasons her underlying claims fail. BNSF further maintains that given its good-faith defenses, the Court would substantially reduce PAGA civil penalties even if it were to find in Plaintiff's favor on some or all of her claims.

17. The Parties in this case engaged in significant informal discovery. In connection with mediation, BNSF produced a sampling of payroll data for the putative class, relevant data points for the putative class, copies of the relevant CBAs, and additional relevant policy and training documents. My office hired an expert data analyst to assist us in analyzing and extrapolating the data. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims and BNSF's defenses, as well as the chances for class certification.

18. The Parties attended a full-day mediation with Tripper Ortman, an experienced wage and hour class action mediator, on October 29, 2025, during which they vigorously debated Plaintiff's claims and BNSF's defenses, and the chances of certification. After more than 10 hours of mediation, with the aid of Mr. Ortman, the Parties reached a deal. The Parties executed a short-form Memorandum of Understanding in November 2025. Over the following months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the long-form Settlement in February 2026.

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19. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	$2,000,000.00
Minus Court-approved attorneys' fees (up to one-third):	$666,667.00
Minus Court-approved costs (up to):	$30,000.00
Minus Court-approved Enhancement Payment:	$5,000.00
Minus Amount Set Aside as PAGA penalties:	$200,000.00
Minus estimated settlement administration costs:	$20,000.00
Net Settlement Amount ("NSA"):	**$1,078,333.00**
PLUS 35% of PAGA penalties ("PAGA Group Payment"):	$70,000.00
Total Amount Paid to Settlement Class:	**$1,148,333.00**

20. The Settlement provides for BNSF to pay a Gross Settlement Amount ("GSA") of $2,000,000.00. After deducting amounts for attorney fees, litigation costs, Plaintiff's enhancement payment, PAGA penalties to the LWDA, and administration costs, the Settlement provides for distribution of approximately $1,148,333.00 to be paid to the Settlement Class. BNSF represents that there are approximately 2,893 Settlement Class members. Thus, the average payment to Settlement Class members is estimated to be $396.94. The settlement is non-reversionary, and it does not require Settlement Class members to submit a claim to receive financial benefit from the Settlement. Given the limited claims that Settlement Class members will release under the Settlement, Plaintiff submits that this represents a strong result for the Settlement Class, in the face of multiple defenses to hotly contested claims.

21. As explained in the Settlement, 80% of the NSA will be allocated as the "Wage Statement Settlement Amount," and will be distributed to those Settlement Class members who worked for BNSF at any point from March 7, 2024 to January 31, 2026 (the "Wage Statement Period"). These Settlement Class members are known as the "Wage Statement Group." Based on data provided by BNSF in advance of mediation, roughly 75% of all Settlement Class members worked for BNSF during the Wage Statement Period and therefore will be members of the Wage Statement Group. This portion of the NSA will be distributed to Wage Statement Group members proportionately based on the number of pay periods in which they performed work for BNSF during the Wage Statement Period.

22. The remainder of the NSA will be distributed to all Participating Class Members, also known as the "Reimbursement Group." This portion of the NSA, known as the "Reimbursement Settlement Amount," will be distributed to all Reimbursement Group members

proportionally based on the number of Work Months in which each Reimbursement Group member worked for BNSF during the Reimbursement Period (i.e., the Class Period).

23. Finally, all Settlement Class members (even those who opt out) who were employed by BNSF in California at any time from March 7, 2024 to January 31, 2026 (the "PAGA Period") are known as the "PAGA Group," and PAGA Group members will receive a portion of the $70,000 PAGA Group Payment, based on their proportionate number of pay periods worked for BNSF in California during the PAGA Period.

24. While Plaintiff is confident in the merits of her claims, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. BNSF presented multiple defenses to Plaintiff's claims, both on the merits and to class certification and PAGA manageability, rendering success far from certain.

25. With respect to Plaintiff's wage statement claim, and based on analysis of data provided by BNSF in connection with mediation with the aid of a data expert, Plaintiff estimated approximately 43,006 pay periods worked by Settlement Class members within the one-year liability period applicable to Section 226, in which one or more of the alleged wage statement violations occurred. Using the $50 "initial" violation rate and $100 "subsequent" violation rate under Labor Code § 226(e), Plaintiff estimated a maximum of $4,163,300 in potential exposure on the wage statement claim. However, and as explained in the Motion, BNSF presented multiple defenses to this claim, including but not limited to its arguments that the claim was preempted by federal law, that Plaintiff would not be able to show that she or any other employee were "injured" by BNSF's wage statements, that Plaintiff would not be able to demonstrate that any alleged violations were "knowing and intentional," that Plaintiff would not certify this claim due to differences among individual employees and particularly with respect to whether each alleged violation caused injury, and that the CBAs would preclude Plaintiff from proceeding with her claims on a class action basis or in court at all. In light of these defenses, Plaintiff discounted the claim by 35% for risk of non-certification, and an additional 45% for risk of losing on the merits or failure to recover the full amount sought, for a realistic exposure of $1,488,380 on the wage statement claim.

26. As for Plaintiff's reimbursement claim, Plaintiff estimated approximately $15 per month in unreimbursed expenses for employees' use of their personal cell phones, and approximately 84,866 months worked by Settlement Class members during the Class Period, for a total estimated exposure of $1,272,990. As noted in the Motion, however, BNSF presented several defenses to this claim, including that the claim is preempted by federal law, that the relevant CBAs' arbitration provisions would preclude proceeding with this claim on a class basis or in court at all, that the claim would not be certified due to individualized inquiries needed to demonstrate liability for each employee, and BNSF's assertion that employees were provided any tools or equipment necessary for their jobs. In light of these defenses, Plaintiff discounted this claim by 50% for risk of non-certification, and an additional 50% for risk of losing on the merits or failing to recover the full amount sought, for a realistic exposure of $318,248 on the reimbursement claim.

27. Plaintiff also alleges that BNSF is liable for PAGA civil penalties as a result of the above violations. Plaintiff estimated a reasonable maximum PAGA exposure of $100 under Lab. Code § 2699(f) for each pay period with an alleged violation, for a total maximum recovery of approximately $4,500,600 (i.e., 43,006 pay periods with an alleged wage statement violation, and an additional roughly 2,000 pay periods with a reimbursement violation, assuming an ability to recover up to one penalty per employee) during the applicable one-year statutory period. However, these penalties derive from Plaintiff's underlying claims, each of which BNSF vigorously disputes (as described above). In addition, BNSF asserts that the PAGA grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and that the Court would reduce penalties significantly given BNSF's good-faith defenses and its good-faith belief that it complied with the law – indeed, many courts have reduced PAGA penalties severely in the face of good-faith defenses (see, e.g., *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer was "not aware" of violations and "took prompt steps to correct all violations once notified"); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just $5 per pay period where employer made "good faith attempts" to comply with the

law). BNSF also argues that this claim would not be manageable on a representative PAGA basis, in light of differences among employees' individual experiences, whether employees actually were allegedly injured by each alleged violation in each pay period, and other manageability issues. Thus, Plaintiff discounted the maximum figure by 60% for risk of losing on the merits and/or the Court finding the claims would not be manageable, and by an additional 70% for risk of the Court reducing penalties, to arrive at an estimated exposure of $540,072.

28. Using these estimated figures, Plaintiff estimated the realistic total classwide recovery on her claims would be approximately $2,346,700 if she had proceeded through class certification and trial on the merits. The proposed settlement of $2,000,000 therefore represents over 85% of Plaintiff's reasonably forecasted recovery.

29. At final approval, Plaintiff's counsel will request attorneys' fees of up to one-third the GSA (currently estimated at $666,667), and up to $30,000 in litigation costs. My office has incurred substantial attorneys' fees in, among other things, conducting pre-filing investigation and legal research; preparing and filing the initial pleadings; preparing for and attending the mediation session; negotiating and preparing the MOU and the long-form Settlement; preparing this Motion; and otherwise prosecuting this case. I anticipate that my office will incur significant future attorneys' fees in overseeing the Notice process, fielding phone calls from Settlement Class members, preparing the Final Approval Motion and supporting documents, and appearing at the Final Approval Hearing. In addition, based on my experience in similar wage and hour class and PAGA actions in California courts, fee awards in matters such as this one generally equal about one-third of the gross recovery.

30. Plaintiff will request an incentive payment of $5,000 at final approval. As will be fully briefed at final approval, Plaintiff's requested incentive payment is in recognition of the time and effort she expended on behalf of the Settlement Class, including providing factual information and documents to my office, attending multiple telephonic meetings with counsel to discuss the claims and theories at issue in the litigation, reviewing the settlement agreement and other documents related to this case, and otherwise actively participating in the litigation.

31. Although the parties engaged in significant informal discovery, they had not completed formal written and deposition discovery, which would have required expenditure of substantial time and resources. Plaintiff also still had to file for class certification. Even if Plaintiff obtained certification, the parties would incur considerable attorneys' fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. The proposed settlement avoids these risks, expense, and delays, and is therefore a favorable outcome for the Settlement Class.

32. On today's date, I submitted the proposed Settlement to the LWDA. In addition, I plan to submit a copy of the Motion for Preliminary approval and this declaration to the LWDA, once the Court assigns a hearing date and time for the Motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 22, 2026 at Beverly Hills, California.

Tuvia Korobkin

EXHIBIT 1

CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE AGREEMENT

This Class Action and Private Attorneys General Act Settlement and Release Agreement ("**Agreement**," "**Settlement Agreement**" or "**Settlement**") is entered into by Plaintiff Natalie Spencer ("**Plaintiff**"), on behalf of herself, the State of California Labor and Workforce Development Agency ("**LWDA**"), and the Settlement Class and PAGA Group, on the one hand, and, on the other hand, BNSF Railway Company ("**Defendant**"). For purposes of this Agreement, Plaintiff and Defendant are collectively referred to as the "**Parties**."

By way of this Agreement, the Parties seek to settle all of the individual, class, and California Private Attorneys General Act ("PAGA") representative claims asserted in the lawsuit entitled *Spencer v. BNSF Railway Company, et al*., which is currently pending in Contra Costa County Superior Court, Case No. C25-00652.

The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising disputed legal and factual issues and that nothing in this Settlement Agreement is an admission of liability or wrongdoing by Defendant.

RECITALS

1. **The Action**. On March 7, 2025, Plaintiff filed a putative class action lawsuit entitled *Spencer v. BNSF Railway Company, et al*. in Contra Costa County Superior Court, Case No. C25-00652. On May 16, 2025, Plaintiff filed a first amended complaint, which added to the lawsuit a claim under the Private Attorneys' General Act ("PAGA"), which was based on the allegations set forth in the letter sent on her behalf to the California Labor and Workforce Development Agency dated March 10, 2025. This lawsuit is referred to herein as the "**Action**."

2. **The Successful Mediation**. On October 29, 2025, the Parties attended a private mediation with Tripper Ortman, a well-respected mediator with extensive experience in wage and hour, class and representative action mediation. The Parties reached a settlement of the Action at the full-day mediation and subsequently executed a detailed Memorandum of Understanding on November 17, 2025.

3. **Class Counsel's Investigation**. Marquee Law Group, APC ("**Class Counsel**"), counsel for Plaintiff, the Class Members, and the PAGA Group Members, conducted a formal and informal investigation into the facts and allegations of the Action, including an extensive review of documents and data provided by Defendant. In particular, Class Counsel made informal discovery requests in advance of mediation, and reviewed and analyzed documents produced in response to such requests, including relevant policy documents, Plaintiff's personnel file and wage statements, payroll data for relevant Class Members, and additional relevant data points. Class Counsel also investigated the claims against Defendant in the Action and analyzed all applicable defenses raised by Defendant.

4. **Class Counsel's Evaluation**. Class Counsel believes that the Settlement documented by this Agreement is fair, reasonable, and adequate, and in the best interest of the Class Members and PAGA Group based on all known facts and circumstances, including the risk of significant delay, defenses asserted to the merits of the Action, defenses asserted to class certification and the

manageability of a PAGA representative action, as well as defenses to the overall issue of liability and damages, and potential appellate issues.

5. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge any and all claims, rights, demands, charges, complaints, causes of action, obligations or liability of any and every kind that were or could be asserted in the Action based upon the operative facts alleged in any of Plaintiff's complaints, amended complaints or in the letter to the Labor and Workforce Development Agency. Additionally, the Parties intend the Settlement of the Action as described in this Agreement to be contingent upon: (1) the Court's preliminary and final approval of the terms of this Agreement, including entry of a final approval order and the judgment described in Section X; and (2) satisfaction of all conditions described in Section III(A)(1)-(3).

6. **The Parties stipulate to the certification of this Settlement Class solely for purposes of this Agreement**. The Parties stipulate to certify the Class described herein for settlement purposes only. The Parties' stipulation to class certification is contingent upon the preliminary and final approval and certification of the Settlement Class only for purposes of this Agreement. Should this Agreement not become final or not be approved by the Court, for whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification as part of the Agreement shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in the Action. Defendant does not waive, and instead expressly reserves, its rights to challenge the propriety of class certification or representative treatment for any purpose should the Court not approve this Agreement.

7. **The Parties' Agreement to Cooperate and Execute Necessary Documents.** The Parties agree to cooperate and to take all steps reasonably necessary and appropriate to effectuate the terms of this Agreement including to obtain a preliminary approval order and Final Approval Order of this Settlement, to obtain entry of judgment and/or dispose of the Action and claims of Class Members and aggrieved employees with prejudice, and to have Defendant timely provide the Class Data (defined below) and fund the Gross Settlement Amount.

NOW THEREFORE, in consideration of the recitals listed above and the promises, releases, and warranties set forth below, and with the Parties' intent to be legally bound and to acknowledge the sufficiency of the consideration and undertakings set forth herein, Plaintiff, individually and on behalf of the Class Members, the PAGA Group, and the State of California LWDA, on the one hand, and Defendant, on the other hand, agree that the Action shall be and is finally and fully compromised and settled as to the Released Parties, on the terms and conditions set forth herein, subject to Court approval:

AGREEMENT

I. DEFINITIONS

A. Class Definition and Class Period: "**Class**," "**Settlement Class**", or "**Class Members**" means: all current and former engineers, conductors, and brakemen employed by Defendant and based in California at any time from March 7, 2021 through the earlier of January 31, 2026 or the date the Court grants preliminary approval of the settlement ("**Class Period**"). Individuals who meet the foregoing criteria are referred to herein individually as "**Class Member**" or collectively as "**Class Members**." There are approximately 2,760 Class Members.

B. "**Class Counsel**" means: Tuvia Korobkin and Alex Purcell of Marquee Law Group, APC.

C. The "**Court**" shall mean, for purposes of this Agreement, the court in which Plaintiff files her motions for preliminary and final approval of the Settlement, as contemplated herein.

D. "**Effective Date.**" The "**Effective Date**" of the Settlement shall be the date on which all of the following events described in this paragraph have occurred: (a) the Court has conducted the Final Settlement Approval Hearing and fully and finally approved all material terms of the Settlement Agreement; (b) the Court enters a Final Approval Order granting final approval of this Agreement; (c) a Judgment has been entered in the Action and the time period to appeal the Judgment has been exhausted without any appeals having been filed; and (d) to the extent a timely appeal was filed in the Action, all such appeals have been voluntarily or involuntarily dismissed, or the appropriate appellate court or the appellate courts have entered a final judgment affirming the Final Approval Order and judgment without material modification and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure.

E. "**Final Approval Order**" refers to the order by the Court finally approving the Settlement following the Final Settlement Approval Hearing.

F. "**Reimbursement Group.**" The Settlement Class includes the following "**Reimbursement Group**" defined as all engineers, conductors, and brakemen employed by Defendant and based in California at any time between March 7, 2021 and the earlier of January 31, 2026 or the date the Court grants preliminary approval of the settlement ("**Reimbursement Period**"). Individuals who meet the foregoing criteria are referred to herein individually as "**Reimbursement Group Member**" or collectively as "**Reimbursement Group Members**."

G. "**Wage Statement Group**." The Settlement Class also includes the following "**Wage Statement Group**" defined as all engineers, conductors, and brakemen employed by Defendant and based in California at any time between March 7, 2024 and the earlier of January 31, 2026 or the date the Court grants preliminary approval of the settlement ("**Wage Statement Period**"). Individuals who meet the foregoing criteria are referred to herein individually as "**Wage Statement Group Member**" or collectively as "**Wage Statement Group Members**."

H. "**PAGA Group**": "**PAGA Group**" or "**PAGA Group Members**" means all current and former engineers, conductors, and brakemen employed by Defendant and based in California at any time between March 7, 2024 and the earlier of January 31, 2026 or the date the Court grants preliminary approval of the settlement (the "**PAGA Period**"). Individuals who meet the foregoing criteria are referred to herein individually as "**PAGA Group Member**" or collectively as "**PAGA Group Members**."

I. "**Settlement Administrator**" refers to ILYM Group ("ILYM"), the third-party administrator, who has been mutually selected by the Parties, subject to Court approval, to perform the notice, settlement administration, and distribution of payment functions further described in this Agreement. The Settlement Administrator shall establish a Qualified Settlement Fund ("QSF") pursuant to U.S. Treasury Regulation Section 468B-1 for purposes of administering the Settlement.

J. "**Pay Period**" means, for purposes of this agreement, any pay period during the Wage Statement Period or PAGA Period in which a Wage Statement Group Member or PAGA Group Member was based in California and received compensation for time worked during the period as an engineer, conductor, or brakeman, but shall not include any full pay periods during which a Class Member or PAGA Group Member was on a paid or unpaid leave of absence.

K. **"Work Month"** means, for purposes of this agreement, any month during the Reimbursement Period in which a Reimbursement Group Member was based in California and received compensation for time worked during the month as an engineer, conductor, or brakeman, but shall not include any full months during which the Reimbursement Group Member was on a paid or unpaid leave of absence.

II. PROVISIONAL APPROVAL OF THIS AGREEMENT

A. Upon execution of this Agreement, the Parties shall take the following actions:

1. Class Counsel will prepare a motion requesting that the Court enter a preliminary approval order preliminarily approving the proposed settlement, certifying the requested class for settlement purposes only, approving the form of notice and authorizing the mailing of notice to class members, designating Class Counsel (as defined above) as Class Counsel for purposes of settlement approval and Plaintiff as the Class Representative, appointing a settlement administrator, and setting a date for the final approval hearing. Class Counsel shall provide counsel for Defendant with a draft of the preliminary approval motion and supporting papers, and proposed preliminary approval order, for review and opportunity to provide comments at least ten (10) days prior to the filing of the motion for preliminary approval. To the extent Defendant's counsel has comments or makes proposed edits to the motion for preliminary approval and/or supporting papers, Class Counsel will consider those proposed edits and comments in good faith and will meet and confer in good faith with Defendant's counsel over any disputes over the same, prior to filing the motion. The proposed preliminary approval order shall be provided to the Court in a form and content mutually agreed to by the Parties. The proposed preliminary approval order shall include all of the following:

a) Preliminarily certifying, for settlement purposes only, a Class comprising the Class Members;

b) Preliminarily appointing, for settlement purposes only, Class Counsel;

c) Preliminarily appointing, for settlement purposes only, Plaintiff, as the class representative;

d) Appointing and approving ILYM as the Settlement Administrator;

e) Provisionally approving all terms of this Agreement and finding that such terms are sufficient to warrant sending notice of settlement to Class Members;

f) Approving the form and content of the Notice of Proposed Settlement and Final Settlement Approval Hearing (the "**Class Notice**");

g) Authorizing the mailing of the Class Notice to the Class Members; and

h) Scheduling a hearing, to occur within a reasonable period after the Response Deadline (defined below) has expired, in which the Court will hear Plaintiff's motion requesting the Court to fully and finally approve this Agreement and the Settlement herein, and enter judgment (the "**Final Settlement Approval Hearing**").

Defendant does not intend to oppose Plaintiff's Motion for Preliminary Approval provided such motion and supporting papers are consistent with the terms of this Agreement.

B. **Notice of Settlement to Appropriate Government Officials.** Pursuant to California Labor Code section 2699(s), Class Counsel will provide to the LWDA all required notices and documents to facilitate approval of the settlement in accordance with PAGA, including submitting to the LWDA a copy of the proposed settlement at the same time that it is submitted to the Court, a copy of the Court's judgment, and copies of any other orders that award or deny penalties.

This Agreement is contingent upon entry of the Final Approval Order by the Court that is consistent with the terms and conditions specified in this Agreement. However, the Parties agree and acknowledge that the Court may condition the Final Approval Order on modification of this Agreement, which shall not be the basis for nullifying and voiding the Settlement unless the required modification is material (including but not limited to modifications to the Gross Settlement Amount or release provisions of this Agreement) and the Parties have exhausted all efforts to address the Court's concerns as necessary to obtain final approval. The Court's decision to award less than the amounts requested for the Enhancement Payment, Class Counsel Attorneys' Fees and Costs, and/or Settlement Administration Costs shall not constitute a material modification to the Agreement within the meaning of this paragraph. This Agreement shall become null and void in the event the Court for any reason refuses to enter the orders specified in Section II(A)(1) after all opportunities granted by the Court to the Parties for amendment have been exhausted. In the event the Court for any reason refuses to enter such orders, the Parties agree to cooperate in good faith to resolve any issues addressed by the Court, and exhaust all possible solutions to obtain the Court's approval. If the Parties cannot agree on how to address issues raised by the Court to obtain approval of this Agreement or the relief specified in this Section II, then they will seek the assistance of the mediator for resolution.

The Parties agree that in the event that the Court does not grant final approval of the class/PAGA action settlement, the Parties return to the status quo as existed prior to the date the Parties signed this Agreement, including for purposes of calculating the time that has run pursuant to CCP § 583.310, and the operative complaint in each lawsuit shall be the respective initiating complaint.

III. ALLOCATION OF GROSS SETTLEMENT AMOUNT

A. The following are material conditions to be satisfied before and as a condition to payment of the Gross Settlement Amount (defined below):

1. Execution of this Agreement by all signatories.

2. The Court has conducted a Final Settlement Approval Hearing and fully and finally approved all material terms of this Agreement.

3. A Final Approval Order and judgment including all of the provisions identified in Section X(A)(3) is entered by the Court and the Effective Date (defined in Section I(D)) has passed.

B. **Gross Settlement Amount. "Gross Settlement Amount"** means the maximum settlement amount of two million dollars ($2,000,000.00) (the "**Gross Settlement Amount**") to be paid by Defendant on the condition that all of the material conditions set forth above in Section III(A) have occurred, in full satisfaction of all claims released under this Agreement, and includes all individual payments to Class Members and PAGA Group Members, Enhancement Payment to Plaintiff, payment to the LWDA, Attorneys' Fees and Costs to Class Counsel, payment of settlement administration fees and costs to the Settlement Administrator, and any other costs or expenses related to the settlement incurred by Plaintiff or Class Counsel. The Parties agree that, subject to this paragraph and Section XIII, under no circumstances shall Defendant be obligated to pay any amount over the Gross Settlement Amount under the terms of this Agreement except as provided for in this Agreement. This Settlement shall be a non-reversionary Settlement. None of the Gross Settlement Amount will revert to Defendant.

C. **PAGA Penalties.** The Parties agree that Two Hundred Thousand Dollars ($200,000.00) of the Gross Settlement Amount shall be allocated as PAGA penalties to be paid to PAGA Group Members and the LWDA, in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law that were alleged or could have been alleged to have been violated based on the facts alleged and theories asserted in the complaints and notices to the LWDA filed by Plaintiff in the Action ("**PAGA Settlement Amount**"). Pursuant to PAGA, Sixty Five Percent (65%) of the PAGA Settlement Amount will be paid to the LWDA (the "**LWDA Payment**"), and the remaining Thirty-Five Percent (35%) will be paid to all PAGA Group Members ("**PAGA Group Payment**"). The 35% to be paid to PAGA Group Members shall be distributed to individual PAGA Group Members based on the proportionate number of Pay Periods worked by each PAGA Group Member compared to the aggregate number of Pay Periods worked by all PAGA Group Members, in accordance with the methodology set forth in Section VIII(E) herein ("**Individual PAGA Amount**"). The Court's reduction or increase of the PAGA Settlement Amount is not a material term of this Agreement. If the Court approves a lesser amount or a higher amount than that requested by Class Counsel for the PAGA Settlement Amount, the Parties will not object to such determination, the other terms of this Agreement shall apply and the Net Settlement Amount (defined below) to be distributed to the Class Members will be adjusted accordingly.

D. **Enhancement Payment.** From the Gross Settlement Amount, Five Thousand Dollars ($5,000.00) will be allocated to Plaintiff for initiating the Action and providing services in support of the Action ("**Enhancement Payment**"). The Enhancement Payment is in addition to any Individual Settlement Payment Plaintiff is entitled to receive as a Participating Class Member and/or PAGA Group Member. Defendant will not oppose Plaintiff's request for an Enhancement Payment that does not exceed this amount. If the Court approves an Enhancement Payment less than the amount requested, the Settlement Administrator will retain the remainder in the Net Settlement Amount (defined below). Plaintiff agrees that the Settlement Administrator will not withhold any taxes from the Enhancement Payment, and will issue a Form 1099 or other appropriate tax form consistent with the classification of the Enhancement Payment. Plaintiff acknowledges and agrees that Defendant and its counsel have made no representations regarding the proper tax treatment of the Enhancement Payment. Plaintiff agrees, covenants, and represents that Plaintiff shall be solely responsible for paying any taxes and penalties payable on the Enhancement Payment and that Plaintiff shall defend, indemnify, and hold Defendant and the Released Parties (defined below) harmless from any claims, demands, actions, causes of action, losses, costs, attorneys' fees, penalties, or expenses arising from any classification of the Enhancement Payment as taxable income.

E. **Attorneys' Fees and Costs.** "**Attorneys' Fees and Costs**" means the amount allocated to Class Counsel for the work they have performed in furtherance of the Action and for reimbursement of litigation expenses incurred to prosecute the Action. Subject to Court approval, the following payments are to be made from the Gross Settlement Amount to Class Counsel: (i) attorneys' fees actually awarded by the Court in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (currently estimated at $666,667) ("**Attorneys' Fees**"); and (ii) Plaintiff's verified actual litigation costs and expenses actually awarded by the Court up to $30,000.00 ("**Litigation Costs**"). Defendant will not oppose requests for these payments provided that they do not exceed these amounts. If the Court approves

Attorneys' Fees and/or Litigation Costs less than the amounts requested, the Settlement Administrator will allocate the remainder to the Net Settlement Amount. The Settlement Administrator will issue one or more IRS 1099 Forms in connection with the payment of the Class Counsel Attorneys' Fees and Costs.

F. **Settlement Administration Costs.** The costs of the Settlement Administrator, including those costs incurred in mailing the Class Notice to the Class Members as required by this Agreement, will be paid from the Gross Settlement Amount up to the amount quoted (and ultimately billed) by the Settlement Administrator and actually awarded by the Court. This amount is currently estimated at $20,000.00. All disputes relating to the Settlement Administrator's performance of its duties, after good-faith efforts by the Parties to first resolve such disputes, will be referred to the Court, if necessary. To the extent the Settlement Administration Costs are less or the Court approves payment less than the amount billed, the Settlement Administrator will retain the remainder in the Net Settlement Amount for distribution to the Participating Class Members.

G. **Payments to Participating Class Members.** The "**Net Settlement Amount**" means the portion of the Gross Settlement Amount remaining after subtracting the following payments: Attorneys' Fees and Costs to Class Counsel, the Enhancement Payment to Plaintiff, payment to the Settlement Administrator for settlement administration fees and costs, and the PAGA Settlement Amount. The Net Settlement Amount will be distributed to "**Participating Class Members**" (i.e., those Class Members who do not submit valid Requests for Exclusion). Class Members who do not opt out will be entitled to their pro rata share of the Net Settlement Amount (**"Individual Settlement Payment"**), calculated in accordance with the formula set forth in Section VIII(D).

H. **Net Settlement Amount Allocation**. The Parties hereby agree that eighty percent (80%) of the net settlement amount shall be allocated as payment to the Wage Statement Group as settlement of Plaintiff's claim for failure to provide accurate wage statements pursuant to California Labor Code § 226, et seq. (the "**Wage Statement Settlement Amount**"), and the remainder of the Net Settlement Amount shall be allocated as payment to the Reimbursement Group as settlement of the claim for failure to reimburse all necessary business expenses pursuant to California Labor Code §§ 2802, 2804, 1198 (the "**Reimbursement Settlement Amount**").

IV. SETTLEMENT ADMINISTRATOR

A. **Appointment of Settlement Administrator.** The Parties request that the Court appoint ILYM as Settlement Administrator. The Settlement Administrator will be responsible for the administration of the settlement terms set forth herein, and all related matters. Among other responsibilities, the Settlement Administrator will publish notice of the settlement to Class Members through the distribution of written notice to Class Members based on the list provided by Defendant, and issue to Class Members who do not opt-out an IRS Form 1099 for all amounts paid under this settlement as appropriate, making all deductions and withholdings required under law. The Settlement Administrator will calculate and disburse all payments due under this Settlement Agreement. The Individual PAGA Amount paid to PAGA Group Members will be issued separately from the Individual Settlement Payment paid to Participating Class Members, if any. The Individual Settlement Payments will be issued in a single check to each Participating Class Member. The Settlement Administrator will also mail a check for 65% of the PAGA Settlement Amount to the LWDA for settlement of the PAGA claim. The Settlement Administrator will also issue a 1099 form to Class Counsel for sums they received under this Agreement as awarded by the Court. In addition, the Settlement Administrator will notify the Parties of timely and untimely Objections and requests for exclusion received; notify the Parties of any disputes by Class Members of the number of Individual Pay Periods and/or Individual Reimbursement Months, and of persons claiming to be Class Members and resolve any disputes resulting from same; make all other required settlement payments and tax remissions pursuant to the terms of this Agreement and as directed by the Court; and perform such other duties as are described in this Agreement and/or as are customarily performed by settlement administrators. Among its other duties as described in this Agreement, the Settlement Administrator shall provide counsel for the Parties with a weekly report showing the number of opt-outs and Objections received as well as declarations as required by the approval process of this Settlement. The Parties agree to provide any reasonable information requested by the Settlement Administrator needed to effectively administer the settlement.

V. NOTICE OF SETTLEMENT TO CLASS MEMBERS AND PAGA GROUP MEMBERS

A. **Class Data for Settlement Administrator.** Within **thirty (30) calendar** days after entry of the Court's preliminary approval order that includes all of the provisions identified in Section II(A)(1), Defendant shall provide to the Settlement Administrator the following information for each Class Member and/or PAGA Group Member in a password protected Microsoft Excel format: name, last known address, Social Security number, and the number of Individual Pay Periods and/or Individual Reimbursement Months attributable to each Class Member/PAGA Group Member ("**Class Data**").

1. Within three (3) business days of receipt of the Class Data by the Settlement Administrator, the Settlement Administrator shall notify Class Counsel that the Class Data has been received and provide to Class Counsel, without revealing any confidential information (such as names, Social Security Numbers, contact information, or other personally identifiable information), the number of Class Members, Reimbursement Group Members, Wage Statement Group Members, and PAGA Group Members along with the total Pay Periods and Reimbursement Months worked by all Class Members.

B. **Confidentiality Of Class Member Contact Information And Data.** The contact information is being provided confidentially, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the Class Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Agreement. The Settlement Administrator shall return the Class Data to Defendant or confirm its destruction upon completion of the Settlement Administrator's duties. The Settlement Administrator shall not provide the Class Data to Class Counsel under any circumstances. However, the Settlement Administrator shall, prior to mailing notices, provide Class Counsel and Defendant's Counsel with a spreadsheet containing its calculations and estimated payments for each Class Member, and obtain approval from counsel for those calculations. The spreadsheet provided to Class Counsel shall not contain any identifying information or contact information for Class Members.

C. **Mailing Of Class Notice**. The Settlement Administrator shall mail the Class Notice to Class Members **within fourteen (14) calendar days** of receiving the Class Data from Defendant and after receiving approval from counsel of its calculations, as discussed above. The Settlement Administrator shall send the Class Notice via First Class U.S. Mail, using the most current, known mailing address for each Class Member and PAGA Group Member based on information provided by Defendant. Upon receipt of this information from Defendant, and prior to mailing the Class Notices, the Settlement Administrator shall perform a search based on the National Change of Address Database maintained by the United States Postal Service to update and correct any known or identifiable address changes, and to the extent any updated addresses are found through such search, the Settlement Administrator shall send Class Notices to those updated addresses.

D. **Re-mailing Of Returned Notices**. Any mailing returned to the Settlement Administrator as undeliverable shall be sent **within three (3) business days** via First Class U.S. Mail to the forwarding address affixed thereto, if applicable. If no forwarding address is provided, the Settlement Administrator shall attempt to determine the correct address again using a robust skip trace database to update and correct any known or identifiable address changes. Following this procedure, the Settlement Administrator shall perform a re-mailing via First Class U.S. Mail **within three (3) business days**. It shall be presumed that those Class Members whose re-mailed Class Notices are not returned to the Settlement Administrator as undeliverable within **thirty (30) calendar days** after re-mailing, actually received the Class Notice to the maximum extent permitted by law. The Settlement Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

E. **Content Of The Notice Of Class Action Settlement**. The Class Notice shall be in a form mutually agreed to by the Parties and shall, among other things, inform Class Members of their right to decline to participate in the class action portion of the settlement established by this Agreement, so long as the Class Member submits to the Settlement Administrator a valid Request for Exclusion on or before the

Response Deadline (defined below), accurately describe the scope of the release, provide all deadlines and material terms of the Settlement, Class Counsel's contact information, and a URL to a website maintained by the Settlement Administrator that has links to the Class Notice and the most important publicly filed documents in the case. The Class Notice shall also state that a Class Member's right to opt out applies only to the class action portion of the Settlement and that no opt out right applies to the settlement of PAGA claims in the Action. It shall be presumed that each and every Class Member whose Class Notice is not returned to the Settlement Administrator as undeliverable **within thirty (30) calendar days** after mailing or remailing (as described above in Section V(D)) actually received it to the maximum extent permitted by law.

F. **Proof Of Mailing**. **At least 21 court days** prior to the Final Settlement Approval Hearing, the Settlement Administrator shall provide a finalized and executed declaration of due diligence and proof of mailing with regard to mailing of the Class Notice to Class Counsel and Defendant's Counsel, which Class Counsel shall in turn provide to the Court. **No later than 5 court days** before the final executed declaration is due to be filed by Class Counsel, the Settlement Administrator shall provide to Class Counsel and Defendant's Counsel a final draft of the declaration for review.

G. Counsel for the Parties shall not attempt in any way to initiate contact or initiate communications with any Class Member other than through the Class Notice, to discuss the Settlement, except as provided in this Agreement and to the extent any Class Member identified by the Settlement Administrator as to whom the Class Notice is believed by the Settlement Administrator to have been undeliverable, in which case counsel for Defendant may make reasonable attempts to secure accurate contact information for such Class Member. Notwithstanding the foregoing: (i) Class Counsel may respond to questions about the Settlement by Class Members who contact Class Counsel; (ii) counsel for the Parties may respond to questions by the Settlement Administrator about specific claims or questions of Class Members; and (iii) Defendant may communicate with employees and the Class Members to discuss or describe the Settlement as set forth in this Agreement provided that such communications shall not interfere with or discourage participation in the Settlement.

VI. THE OPT-OUT PROCEDURE

A. **Class Members' Consideration Period**. The Class Notice shall state that Class Members who wish to exclude themselves from, or "opt out" of, the class action portion of the Settlement must submit a signed, written Request for Exclusion to the Settlement Administrator ("**Request for Exclusion**"). The deadline to submit a Request for Exclusion is **45 calendar days** from the original date that the Class Notice was mailed (the "**Response Deadline**") (plus an additional 14 days for Class Members whose Class Notice is re-mailed). To be valid, a Request for Exclusion must be timely sent by U.S. mail and be postmarked to the Settlement Administrator at the address listed in the Class Notice on or before the Response Deadline. The date of the postmark on the envelope containing the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. No later than five (5) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a complete list of all members of the Class who have timely submitted requests for exclusion.

B. **No right to opt out from PAGA settlement**. The Class Notice shall state that a Class Member's right to opt out applies only to the class action portion of the Settlement and that no opt out right applies to the settlement of PAGA claims in the Action. Accordingly, each PAGA Group Member, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Settlement Amount consistent with the calculation set forth in Section VIII(E) herein.

C. **Opt-Out Procedures**. A Class Member who wishes to opt out of the class portion of the Settlement shall send a Request for Exclusion to the Settlement Administrator, which is a letter setting forth their name, the last four digits of the Social Security number of the Class Member requesting exclusion, the name of the Action, and a statement that they request exclusion from the class and do not wish to participate in the settlement. To be valid, the Request for Exclusion must: (i) reasonably communicate the Class Member's election to be excluded from the class portion of the Settlement and contain sufficient Class Member identifying information; (ii) be signed by the Class Member; and (iii) be postmarked by the Response Deadline and submitted to the Settlement Administrator at the specified address. Requests for Exclusion must be returned to the settlement administrator by U.S. mail, but an otherwise valid and timely Request for Exclusion that is received by the settlement administrator by the Response Deadline will be accepted. All Class Members who do not timely submit a valid Request for Exclusion shall be bound by the terms and conditions of this Agreement including the release of claims described herein, and shall also be bound by any Court orders related to this Agreement or the Action.

D. **Effect of Opt-Out**. Class Members who successfully submit a Request for Exclusion ("**Non-Participating Class Member**") will not be entitled to a settlement payment for the class portion of this Settlement, and will not be bound by the class action release of this Agreement. To the maximum extent permitted by law, any Class Member who opts out of the Settlement may not object to the Settlement. If a Class Member submits both a Request for Exclusion and an Objection, the Class Member's Request for Exclusion will be deemed to invalidate the Objection. Class Members who submit valid and timely requests to opt out of the Settlement shall not receive a payment for settlement of Class claims pursuant to the Settlement, nor shall such Class Members be bound by the terms of the Settlement of their individual claims against Defendant pursuant to this Settlement. However, Class Members who submit a valid Request for Exclusion will nevertheless be bound by the settlement and release of PAGA claims in the Settlement to the extent they are a member of the PAGA Group and will receive a payment for their individual share of the PAGA Group Payment in settlement of

PAGA claims pursuant to the terms of this Agreement. Class Members who receive a Class Notice (or to whom the Class Notice is sent and not returned to the Settlement Administrator as undeliverable) but do not submit a valid and timely Request for Exclusion on or before the Response Deadline shall be deemed Participating Class Members and shall be bound by all terms of the Settlement and any final judgment entered in the Action if the Settlement is approved by the Court.

E. The Settlement Administrator shall review each Request for Exclusion upon receipt for timeliness, completeness, and validity. If a submitted Request for Exclusion is defective or incomplete, the Settlement Administrator will promptly notify the Class Member of the defect or deficiency and permit the Class Member fourteen **(14) days** from the date of the mailing of the deficient form or the Response Deadline, whichever is later, to cure the defect (the "**Cure Deadline**"). Notwithstanding the foregoing, any Request for Exclusion that is cured will not be considered effective unless: (i) the original Request for Exclusion was postmarked or delivered by the Response Deadline; and (ii) the cured Request for Exclusion was postmarked or delivered by the Cure Deadline. Class Members shall only be permitted one opportunity to cure a defective Request for Exclusion.

F. Unless otherwise permitted by this Agreement, only the Settlement Administrator has the right to contact Class Members who submit a Request for Exclusion. The Settlement Administrator shall not interfere with any Class Member's right to submit a Request for Exclusion and shall communicate with a Class Member solely for purposes of determining the validity, completeness, and any defect in a submitted Request for Exclusion. The Settlement Administrator shall not have the authority to extend the Response Deadline or Cure Deadline except as directed by the Court or otherwise agreed to by the Parties in writing. The Settlement Administrator shall provide weekly updates concerning the status to both Class Counsel and counsel for Defendant, which will not in any way hamper or impede the right of Class Members to submit Requests for Exclusion.

G. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to opt out of the Settlement or to appeal from the Final Approval Order. Plaintiff and Defendant and their respective counsel each agree that they will not distribute to any Class Member any documents, notices, or information regarding the Action or the settlement other than documents, notices, or information approved by the Court, including but not limited to any documents, notices, or information that would encourage or discourage a Class Member from opting out, unless a specific request is first made to them by the Class Member.

VII. OBJECTING TO THE SETTLEMENT

A. **Objection Rights**. Participating Class Members who wish to object to the Settlement may do so in writing by submitting a written objection ("**Objection**") to the Settlement Administrator within the Response Deadline. Participating Class Members may also appear at the Final Approval Hearing and present their objection orally, regardless of whether the Class Member submitted an Objection to the

Settlement Administrator. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether an Objection is timely submitted. The Settlement Administrator shall provide all such Objections to Class Counsel and Defendant's counsel promptly upon receipt. The Court retains final authority with respect to the consideration and admissibility of any Class Member's Objections. Plaintiff and Defendant may respond in writing to any written Objections by **no later than seven (7) calendar days** before the Final Settlement Approval Hearing (or some other number of days as the Court shall specify) unless the Objection is received at a later time. Plaintiff and Defendant may respond to Objections orally at the Final Settlement Approval Hearing.

B. **Written Objection Procedures.** Any written Objection must: (a) contain the case name of the Action; (b) contain the objecting Class Member's full name and signature, as well an address and/or email address where the objecting Class Member can receive notices; (c) contain the name and contact information of any attorney(s) representing the objecting Class Member; (d) contain a written statement of the grounds for the objection and supporting documents, if any; and (e) be sent by mail to the Settlement Administrator, postmarked on or before the Response Deadline. These instructions, as well as information regarding how to appear, will be communicated in the Class Notice.

C. Class Members who object to the Settlement may still participate in the Settlement. A Class Member who objects, but does not submit a Request for Exclusion, will remain a Participating Class Member. Accordingly, if the Court approves the Settlement, such Class Members will be bound by the terms of the Settlement in the same way as the Class Members who did not object. Only those Class Members who opt-out will not be bound by the class action portion of this Agreement.

D. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel's Attorneys' Fees and Costs and/or the Enhancement Payment to Plaintiff.

E. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

F. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written Objections to the Settlement or to appeal from the Court's Final Approval Order and judgment thereon.

G. **Waiver of Objection Rights.** To the fullest extent permitted by law, Class Members who fail to submit Objections in the manner specified in the Class Notice and/or fail to appear in Court to present verbal objections at the Final Approval Hearing shall be deemed to have waived any Objections and shall be foreclosed from making any Objection, whether by appeal or otherwise, to this Agreement. To the maximum extent permitted by law, the Parties agree that only the Parties and/or Class Members who make a valid and timely Objection maintain the right to appeal. If the objecting Class Member does not formally intervene in the Action or move to set aside the judgment and/or the Court rejects the Class Member's Objection, the Class Member will still be bound by the terms of this Agreement.

H. **Binding Effect of Settlement.** Although some Class Members might not receive the Class Notice or timely submit a Request for Exclusion, as provided under this Agreement, due to inability to locate their current address following the procedures set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of this Agreement and the Final Approval Order and judgment to the maximum extent permitted by law. The Parties agree that the notice procedures described herein constitute the best notice practicable under the circumstances.

VIII. CALCULATION OF SETTLEMENT PAYMENTS TO CLASS MEMBERS AND PAGA GROUP

A. Upon receipt of the class data, and prior to the mailing of the Class Notice, the Settlement Administrator shall review the information submitted by Defendant to confirm the number of total Pay Periods worked by the Wage Statement Group Members and PAGA Group Members and months worked by the Reimbursement Group Members ("**Reimbursement Group Work Months**") for purposes of performing the calculations of Individual Settlement Payments (defined below). For purposes of this agreement, "**Reimbursement Group Work Month**" means any calendar month during the Reimbursement Period in which a Reimbursement Group Member was based in California and received compensation for time worked during the month as an engineer, conductor, or brakeman, but shall not include any full calendar months during which a Class Member or Reimbursement Group Member was on a paid or unpaid leave of absence.

B. The Settlement Administrator shall thereafter provide to Defendant's counsel and Class Counsel the total number of Class Members, Wage Statement Group Members, Reimbursement Group Members, PAGA Group Members, Pay Periods, and Reimbursement Months in the Class Data.

C. **No Claims Process**. This Settlement does not require Class Members to submit a claim form to participate in the Settlement.

D. **Individual Settlement Calculations and Payments**. No claims process shall be required of Plaintiff or Class Members in order to participate in the Settlement. Calculations of individual payments made to Class Members ("**Individual Settlement Payments**") will be made as follows and shall be included in the Class Notice to each Class Member and based on the assumption that no Class Member opts out:

1. **Individual Wage Statement Group Payments**. Each Wage Statement Group Member's individual share of the Wage Statement Settlement Amount shall be calculated on a pro rata basis. The Settlement Administrator shall calculate the total number of Pay Periods worked by

each Wage Statement Group Member during the Wage Statement Period ("**Individual Pay Periods**") and the total number of Pay Periods. The Settlement Administrator shall determine each Wage Statement Group Member's individual share according to the following formula: Wage Statement Settlement Amount divided by the total number of Pay Periods ("**Wage Statement Payment Rate**") multiplied by the number of Individual Pay Periods for each Wage Statement Group Member (the "**Individual Wage Statement Payment**"). Provided, however, that each Wage Statement Group member shall receive at least a minimum Individual Wage Statement Payment equivalent to the figure paid to those Wage Statement Group members who had one pay period during which they received pay for time worked during the Wage Statement Period.

2. **Individual Reimbursement Group Payments**. Each Reimbursement Group Member's individual share of the Reimbursement Settlement Amount shall be calculated on a pro rata basis. The Settlement Administrator shall calculate the total number of Months Worked by each Reimbursement Group Member during the Reimbursement Period (**"Individual Reimbursement Months**") and the total number of Reimbursement Group Months. The Settlement Administrator shall determine each Reimbursement Group Member's individual share according to the following formula: Reimbursement Settlement Amount divided by the total number of Reimbursement Group Months ("**Reimbursement Payment Rate**") multiplied by the number of Individual Reimbursement Months for each Reimbursement Group Member (the "**Individual Reimbursement Payment**"). Provided, however, that each Reimbursement Group member shall receive at least a minimum Individual Reimbursement Payment equivalent to the figure paid to those Reimbursement Group members who had one month during which they received pay for time worked during the Reimbursement Period.

E. **Calculation of PAGA Group Members' Individual Share of PAGA Group Payment**. Each PAGA Group Member's individual share of the PAGA Group Payment shall be calculated on a pro rata basis. The Settlement Administrator will calculate the total number of Individual Pay Periods worked by each PAGA Group Member during the PAGA Period. To determine each PAGA Group Member's Individual PAGA Amount, the Settlement Administrator will use the following formula: (a) dividing the amount of the PAGA Group Payment ($70,000.00) by the total number of Pay Periods, and (b) multiplying the result by each PAGA Group Member's Individual Pay Periods. There are no opt-out rights with respect to the PAGA portion of the Settlement. Accordingly, each PAGA Group Member, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Group Payment proportionate to the number of pay periods in which he or she received pay for time worked during the PAGA Period, subject to Court approval ("**Individual PAGA Amounts**"). Provided, however, that each PAGA Group Member shall receive at least a minimum Individual PAGA Amount equivalent to the figure paid to those PAGA Group Members who had one pay period during which they received pay for time worked during the PAGA Period.

The individual shares of the PAGA Group Payment constitute penalties from which no deductions or withholdings will be taken.

F. **Procedures for Class Members to Dispute Pay Period or Reimbursement Calculations:**

Defendant's records shall be determinative with respect to the number of Individual Pay Periods and Individual Reimbursement Months for each Class Member and PAGA Group Member and shall be presumptively valid, subject to this Section VIII(F). If a Class Member disagrees with the number of Individual Pay Periods or Individual Reimbursement Months listed in his/her/their Class Notice, the Class Member may dispute the number of Individual Pay Periods or Individual Reimbursement Months by communicating with the Settlement Administrator via U.S. mail by no later than the Response Deadline. The Class Member must provide the Settlement Administrator with a written statement explaining the basis for such dispute and supporting documentation, if any. In the absence of any contrary evidence, the Settlement Administrator is entitled to presume that the Individual Pay Periods or Individual Reimbursement Months contained in the Class Notice are correct so long as they are consistent with the Class Data. The Settlement Administrator's determination of each Class Member's allocation of Individual Pay Periods or Individual Reimbursement Months shall be final and not appealable or otherwise susceptible to challenge. The Settlement Administrator shall promptly provide copies of all disputes to calculation of Individual Pay Periods or Individual Reimbursement Months and the Settlement Administrator's determination of the challenges to counsel for Defendant.

IX. TAX ALLOCATION

A. Given the nature of the claims, no portion of the Individual Settlement Payments shall be considered wages and no payroll taxes will be withheld.

B. Neither Defendant nor its counsel, nor Class Counsel, make any representation, and have made no representations as to the tax treatment or legal effect of the payments called for in this Settlement Agreement, and Plaintiff and Class Members are not relying on any statement, representation, or calculation by Defendant or its counsel, the Settlement Administrator, or Class Counsel in this regard. Plaintiff and Class Members understand and agree that Plaintiff and Class Members will be solely responsible for the payment of any taxes and penalties assessed on the payments described in this Settlement Agreement. Plaintiff and any Class Member who receive any payment under this Agreement should consult with their tax advisors concerning the tax consequences of the Individual Settlement Payments and Individual PAGA Amounts they receive under the Settlement.

X. FINAL SETTLEMENT APPROVAL HEARING

A. Class Counsel shall be responsible for ensuring that at least the following documents are filed with the Court in advance of the Final Settlement Approval

Hearing so that the Court will have a sufficient basis upon which to evaluate and approve the Settlement:

1. A final declaration by the Settlement Administrator listing the following: (i) attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, the mailing and re-mailing of the Class Notice (as applicable), the Class Notices returned as undelivered and attempts to locate Class Members; (ii) the total number of Requests for Exclusion the Settlement Administrator received (both valid and invalid) and a list of the names (with no other identifying information) of all persons who submitted timely and valid Requests for Exclusion; (iii) the number of Objections received and attaching copies of the Objections received so the Court can evaluate the merits of the Objections; and (iv) any other information required by the Court.

2. A duly noticed motion for final approval, accompanying memorandum of points and authorities prepared by Class Counsel, and such other pleadings, evidence or other documents as may be necessary for the Court to determine that the Settlement documented by this Agreement is fair, adequate and reasonable.

3. A Proposed Final Approval Order and judgment for the Court's signature, approving the material terms of the Settlement documented by this Agreement. The Final Approval Order will include the full text of the class and PAGA releases. The Parties shall jointly prepare the proposed final approval order and judgment to be submitted as mutually agreed to by the Parties.

4. The Parties will cooperate to finalize the motion for final settlement approval and supporting papers to be prepared by Class Counsel. Class Counsel shall also provide a draft of the motion for final settlement approval and supporting papers, and an opportunity to provide comments thereto, to Defendant's counsel at least ten (10) business days prior to the filing deadline for the motion. Class Counsel shall not file a motion for final settlement approval without providing said notice to Defendant's counsel. To the extent Defendant's counsel has comments or makes proposed edits to the motion for final approval and/or supporting papers, Class Counsel will consider those proposed edits and comments in good faith and will meet and confer in good faith with Defendant's counsel over any disputes over the same, prior to filing the motion. The proposed final approval order and Judgment shall be provided to the Court in a form and content mutually agreed to by the Parties.

5. The motion for final settlement approval will include Class Counsel's applications for Attorneys' Fees and Costs and the Enhancement Payment. However, the Court's decision to award less than the amounts requested for Class Counsel's Attorneys' Fees and Costs and/or the Enhancement

Payment to Plaintiff does not constitute a material modification to the Agreement and will not terminate this Agreement.

6. Pursuant to Labor Code § 2699(s)(3), Class Counsel will provide to the LWDA a copy of the Court's Final Approval Order and Judgment within ten (10) days after entry of the Final Approval Order and Judgment.

XI. PAYMENT TO CLASS MEMBERS AND PAGA GROUP MEMBERS

A. No later than **fourteen (14) calendar days** after the Effective Date (defined in Section I(D)), Defendant shall ensure a wire transfer to a bank account designated by the Settlement Administrator is effectuated for the Gross Settlement Amount. No later than fourteen days after the settlement is funded, the Settlement Administrator shall issue payments to Participating Class Members and/or PAGA Group Members pursuant to the terms of this Agreement from the above-mentioned designated bank account and issue all necessary and proper tax forms.

B. The Settlement Administrator shall mail the Individual Settlement Payments and Individual PAGA Amounts by First Class U.S. Mail to each Class Member's and/or PAGA Group Member's last known address, postage prepaid. Checks shall be valid for **180 calendar days** from the date of mailing (the "**Check Cashing Deadline**"), and the face of each check shall prominently state the Check Cashing Deadline, when the check will be voided. Class Members who do not cash their settlement checks within 180 calendar days after mailing by the Settlement Administrator shall still be bound by the Settlement and the release of claims provided therein. It shall be presumed that each Class Member received his, her, or their Individual Settlement Payment (and Individual PAGA Amount, if applicable) on the date the payment was deposited in the United States mail, unless the payment is returned to the Settlement Administrator within the Check Cashing Deadline. Any check returned by the post office with a forwarding address will be re-mailed within **five (5) calendar days** by the Settlement Administrator to that forwarding address via First Class U.S. Mail. If no forwarding address is provided, the Settlement Administrator shall attempt to determine the correct address using all reasonably available sources, methods, and means, including, but not limited to, the "National Change of Address Database", skip traces, and direct contact by the Settlement Administrator with Participating Class Members, and it shall then perform a re-mailing within **seven (7) calendar days** of receiving a returned check. The Settlement Administrator need not take further steps to deliver checks to Participating Class Members whose re-mailed checks are returned as undelivered. The Settlement Administrator shall promptly send a replacement check to any Participating Class Member whose original check was lost or misplaced, requested by the Participating Class Member prior to the void date.

C. In accordance with California Code of Civil Procedure Section 384, any checks returned to the Settlement Administrator by the post office as undeliverable after the Settlement Administrator takes steps set forth above, and all funds from checks that are not cashed by the Check Cashing Deadline, shall be distributed as follows:

1. The amount of any Individual Settlement Payments and Individual PAGA Amounts that remain undeliverable or uncashed 180 calendar days after the postmarked date of the initial mailing of the checks for Individual Settlement Payments and/or Individual PAGA Amounts will be paid to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash his or her check, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). The Participating Class Member and/or PAGA Group Member will nonetheless remain bound by the Settlement. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Class Members, whether or not they all cash their Individual Settlement Payments.

2. The Settlement Administrator shall notify the Parties' counsel of the total amount that was actually paid to the Class Members and the amount of funds that are unclaimed.

3. At a date set by the Court for a final accounting, the Parties shall advise the Court of the total amount that was actually paid to Class Members under this Agreement and the amount of funds that are unclaimed by Class Members and transmitted (or will be transmitted) to the California State Controller's Unclaimed Property Fund.

D. **No Impact On Contributions To Employee Benefit Plans**. None of the payments made pursuant to this Agreement shall be considered to alter the terms or to grant any rights to additional payments under any employee benefit plans. None of the payments made pursuant to this Agreement shall be considered for purposes of determining eligibility for, vesting or participation in, or contributions to any benefit plan, including, without limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 ("**ERISA**"). Any distribution of payments to Plaintiff or Class Members shall not be considered as a payment of wages or compensation under the terms of any applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under any applicable benefit plan. Any amounts paid will not impact or modify any previously credited hours of service or compensation taken into account under any bonus or incentive plan, benefit plan sponsored or contributed to by Defendant or any jointly-trusteed benefit plan, or for purposes of calculating the regular rate of pay. For purposes of this Agreement, "benefit plan" means each and every "employee benefit plan," as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy.

XII. PAYMENT OF ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL; SETTLEMENT ADMINISTRATION EXPENSES; ENHANCEMENT PAYMENT

A. No later than **fourteen calendar days** after funding of the settlement, the Settlement Administrator shall transfer the following amounts, as awarded by the Court:

1. To Class Counsel, the amounts ordered by the Court for all attorneys' fees and costs incurred in prosecuting the Action;

2. To the Settlement Administrator, the amounts ordered by the Court for all its expenses;

3. To Plaintiff, the amount ordered by the Court for the Enhancement Payment; and

4. To the LWDA, the LWDA Payment.

XIII. ESCALATOR CLAUSE.

A. Defendant represented for purposes of mediation that there are approximately 84,866 months for which Class Members received pay for time worked from March 7, 2021 through September 10, 2025. If the actual number of aggregate months for which Class Members received pay for time worked during the Class Period exceeds this figure by more than 10% (i.e., if there are 93,353 or more aggregate months worked by Class Members in the Class Period), Defendant shall have the option of either: (a) proportionally increasing the Gross Settlement Amount based on the months worked over and above the 10% estimate (e.g., if the total months worked are eleven percent (11%) higher than the estimated months worked, Defendant will increase the Gross Settlement Amount by one percent (1%)); or (b) ending the Class Period on a date that will not result in an increase of more than 10% of the estimated months worked in the Class Period.

B. The Parties agree that, except as set forth in this Section XIII, under no circumstances shall Defendant be obligated to pay any amount that exceeds two million dollars ($2,000,000.00).

XIV. INVALIDATION OF AGREEMENT FOR FAILURE TO SATISFY CONDITIONS

A. In the event the Court fails to enter final judgment approving the Settlement consistent with the terms set forth in this Agreement after the Parties have exhausted all reasonable efforts to amend the Agreement to address the Court's concerns, or such final judgment is vacated or reversed, the Action shall proceed as if no settlement had been attempted and the Parties shall revert back to their prior procedural posture. In such event, nothing in this Agreement shall be used, construed or admissible as evidence by or against any Party as a determination, admission, or concession of any issue of law or fact in the Action, or in any other proceeding for any purpose; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend the Action as if this Agreement never existed. Further, in such event, the Parties shall each pay half of the costs of administration that have been incurred by the Settlement Administrator.

B. **Defendant's Right to Withdraw.** If, prior to the Final Settlement Approval Hearing, the number of persons who submit valid and timely Requests for Exclusion exceeds ten percent (10%) of the total number of Class Members, then Defendant shall have the sole and absolute discretion to withdraw from this Agreement within thirty (30) days of receiving notice that ten percent (10%) or more of the Class Members timely opted out of the Settlement. If Defendant elects to so withdraw, the withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a condition of settlement, except that Defendant shall pay 100% of any costs of administration that have been incurred by the Settlement Administrator.

C. If this Agreement is terminated for failure to satisfy any of the material terms or conditions, or because the Court does not grant final approval of the Settlement despite the Parties' good faith efforts to obtain the same, Defendant shall not be obligated to create or maintain any type of settlement fund and shall not be obligated to make any settlement payment to any Class Member, PAGA Group Member, LWDA, Class Counsel, or to Plaintiff.

XV. RELEASES, REPRESENTATIONS AND WARRANTIES

A. Class Member Release

1. Release of Claims by Plaintiff and Class Members. In consideration of the monetary sum provided by Defendant and upon the Effective Date and the funding of the Gross Settlement Amount, Plaintiff and each Class Member who does not timely opt-out of the settlement, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which any of them have a controlling ownership interest, shall fully and finally release and discharge Defendant, and its respective former and present parents, subsidiaries, affiliated corporations and entities, successors, insurers, clients, and vendors and independent contractors through which Defendant conducts business, and each of their respective current, former, and future officers, directors, members, managers, employees, consultants, vendors, independent contractors, clients, partners, shareholders, joint venturers and third-party agents, and any successors, assigns, legal representatives, or any individual or entity which could by jointly liable with Defendant and all persons or entities acting by, through, under, or in concert with any of them ("Released Parties"), from any and all claims, rights, demands, liabilities, and causes of action of any kind arising from the alleged violation of any provision of common law, California law and/or federal law that occurred during the Class Period that were pled in the Action, or Plaintiff's LWDA letter, or which could have been pled based on the facts alleged and theories asserted

in the Action, including claims for: failure to reimburse all necessary business expenses (California Labor Code §§ 1198, 2800, 2802, 2804); violation of the IWC California Wage Orders based on the violations alleged in the Complaint; failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3); failure to maintain records (Cal. Lab. Code § 226, 1174, 1174.5); unfair competition in violation of California Business and Professions Code section 17200 *et seq.* based on the above violations; Code of Civil Procedure § 1021.5 based on the above violations; and any damages, penalties, restitution, disgorgement, interest, costs, or attorneys' fees as a result thereof that arose during the Class Period ("Released Claims"). The Released Claims do not include claims to enforce this Agreement or claims that may not be released as a matter of law, including, for example, claims for vested benefits under an ERISA, 401(k), or similar plan, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside of the Class Period.

a) This Settlement and the judgment entered thereon shall have res judicata effect precluding Plaintiff and the Participating Class Members from initiating any other proceedings regarding claims released pursuant to this Agreement.

B. **PAGA Release of Claims**

1. Release of PAGA Claims. For the avoidance of doubt, Class Members/PAGA Group Members have no opt out rights as to the PAGA portion of the settlement of the Action. Accordingly, upon the Effective Date and the funding of the Gross Settlement Amount, in consideration of the PAGA Settlement Amount, Plaintiff, on behalf of herself and the State of California, and all PAGA Group members, waives, fully releases and forever discharges the Released Parties from any and all claims under the PAGA, California Labor Code §§ 2699 *et seq.* arising from claims pled in the Action, or Plaintiff's LWDA letter, or that could have been asserted based on the facts alleged or theories asserted in the Action against Defendant, including, but not limited to, claims for: failure to reimburse all necessary business expenses (California Labor Code §§ 1198, 2800, 2802, 2804); violation of the IWC California Wage Orders; failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3); failure to maintain records (Cal. Lab. Code § 226, 1174, 1174.5); unfair competition in violation of California Business and Professions Code section 17200 *et seq.*; Code of Civil Procedure § 1021.5; and any damages, penalties, restitution, disgorgement, interest, costs, or attorneys' fees as a result thereof that arose during the PAGA Period.

C. **Additional Release by Plaintiff; Representations and Warranties**

1. Additional Release by Plaintiff. In addition to the Class Member Release of Claims and PAGA Group Member release of claims described in this Agreement, effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, on her own behalf and on behalf of her heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses where Plaintiff has a controlling ownership interest, fully releases and forever discharges the Released Parties from any and all claims of any nature, known or unknown, contingent or accrued, against all Released Parties, whether in tort, contract, statute, regulation, or equity, regarding claims for unpaid minimum wages, unpaid overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay wages during employment or timely pay final wages at separation, the rate at which any wages were paid, failure to pay sick pay, failure to pay vacation pay, failure to reimburse expenses of any kind, failure to maintain records, failure to produce records, failure to provide information upon hiring, unlawful deductions, failure to provide accurate itemized wage statements, violation of the applicable order of the Industrial Welfare Commission, violation of the California Labor Code, including but not limited to claims pursuant to California Private Attorney's General Act, and any other wage and hour claims arising out of or relating to Plaintiff's employment, any work performed by Plaintiff for BNSF, or the separation of her employment, based on any facts or theories, including but not limited to unfair competition in violation of California Business and Professions Code section 17200 *et seq.*, and any damages, penalties, restitution, disgorgement, interest, costs, or attorneys' fees as a result thereof.

   Notwithstanding anything to the contrary in this Agreement, Plaintiff does not release claims for (1) Gender and/or Sex Discrimination in violation of the Fair Employment and Housing Act ("FEHA"); (2) Sexual Harassment and Hostile Work Environment in violation of FEHA; (3) Failure to Prevent, Investigate, and Remedy Discrimination in violation of FEHA; (4) Retaliation in Violation of FEHA; (5) Retaliation in violation of California Labor Code section 1102.5; (6) Constructive Wrongful Termination in violation of Public Policy (two counts); (7) Negligent Hiring, Supervision and/or Retention of Employee; (8) Intentional Infliction of Emotional Distress; (9) Negligence; (10) any and all other claims for wrongful termination (including constructive wrongful termination); and (11) other claims that are related to or clearly derived from sexual harassment, including, but not limited to, claims for assault, battery, and the intentional or negligent infliction of emotional distress under California law and FELA. Plaintiff's release provided in this Agreement is specifically limited to wage and hour claims; as to those claims, it is intended to be broad.

a) With respect to the claims included in (and not excluded from) this release, Plaintiff understands and agrees that this release operates to release all such claims to the fullest extent permitted by law. Nothing herein is intended to preserve any claims related to wage and hour matters or claims asserted in the Action that are released pursuant to Sections XV(A)-(C) of this Agreement.

2. Representations and Warranties. Plaintiff hereby represents, covenants, and warrants that Plaintiff has not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber, to any person or entity, any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged. Plaintiff further agrees that Plaintiff shall not in any way hereafter commence, join, aid, or assist others in pursuing any claim, charge or action against any of the Released Parties for any acts or omissions released under this Agreement.

D. **No Misrepresentation**

The Parties understand that the facts with respect to which this Agreement is entered into may be materially different from those the Parties now believe to be true. The Parties accept and assume this risk, and agree that this Agreement, including specifically the releases contained herein, shall remain in full force and effect, and legally binding, notwithstanding the discovery or existence of any additional or different facts, or any claims with respect to those facts.

XVI. CONFIDENTIALITY

The Parties and their counsel shall keep confidential all settlement communications regarding the negotiation and drafting of the MOU and Settlement Agreement. Neither the Parties nor their counsel will issue any press release or other public representation regarding the settlement, other than as necessary to obtain court approval and effectuate the terms of the settlement or as expressly provided below. Provided, however, that the Court may be notified, if necessary prior to the filing of the motion for preliminary approval, that "The Parties have settled the case subject to court approval" while not mentioning the terms. The Parties and their counsel further agree that they will not initiate or have any contact with the press, respond to any press inquiry, or have any communication with the press about the Action or Plaintiff's LWDA letter. Class Counsel will not communicate with other class counsel about this settlement, nor utilize this settlement in any way in their marketing or advertising materials or website, with the sole exception of the following description: "$2 Million Wage and Hour Class Action Settlement". Class Counsel further agrees not to post any picture or other imagery or visual representation of any kind associated with the aforementioned description in any materials, including electronic materials or websites, of any kind that identifies in any way Defendant, the railway industry, or the transportation industry, broadly defined.

Notwithstanding the above, Class Counsel may communicate with Class Members for purposes of the settlement, subject to the limitations set forth in Section VI above, and Defendant may communicate with its employees in the ordinary course of business. Nothing herein shall prohibit any of the Parties from disclosing information relating to the Agreement as required by law. This provision applies equally to Plaintiff.

XVII. MISCELLANEOUS PROVISIONS

A. Acknowledgment that the Settlement is Fair and Reasonable

The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Action, which was reached after non-collusive, arm's-length negotiations and mediation and in the context of adversarial litigation, considering all relevant factors, present and potential, including the risk of continued litigation. The Parties agree, covenant, and represent that this Agreement shall constitute a compromise of, and full accord and satisfaction of, disputed claims.

B. No Admission of Liability

The Parties agree, covenant, and represent that neither this Agreement nor any actions undertaken by Defendant in satisfaction of this Agreement shall constitute, or be construed as, an admission of any liability or wrongdoing by Defendant at any time, or as an admission by Defendant that class certification, or litigation on a representative basis is proper in the Action. By entering into this agreement, Defendant does not admit liability in the Action. Defendant expressly denies that it has violated any law, breached any agreement or obligation to Plaintiff or the Class Members or PAGA Group Members, or engaged in any wrongdoing with respect to Plaintiff or the Class Members or the PAGA Group Members.

C. Representation by Counsel

The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Plaintiff warrants and represents that Plaintiff is fully authorized to enter into this Agreement and the terms and conditions thereof, that there are no liens on the Agreement, and that after entry by the Court of the orders specified in this Agreement, the Settlement Administrator may distribute funds to Class Members, PAGA Group Members, Class Counsel, the LWDA, and Plaintiff as provided by this Agreement.

D. Deadlines Set by this Agreement and Extensions of Time

If any deadline set by this Agreement falls on a Saturday, Sunday, or Court holiday, the deadline shall be deemed to fall on the next day that is not a Saturday, Sunday, or Court holiday. Further, the Parties may, by mutual agreement, agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, subject to Court approval when required.

E. Notice

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, by first class mail, or email to the undersigned persons at their respective addresses as set forth below:

Counsel for Plaintiff and the Class Members:

Tuvia Korobkin
Alex Purcell
MARQUEE LAW GROUP, APC
9100 Wilshire Blvd., Suite 445 East Tower
Beverly Hills, CA 90212
Tel: (310) 275-1844
Fax: (310) 275-1801
tuvia@marqueelaw.com
alex@marqueelaw.com
Attorneys for Plaintiff and the Class

Counsel for Defendant:

Koree Wooley
Jayce Gustafson
JONES DAY
4655 Executive Drive, 15th floor
San Diego, California 92121
Tel: (858) 314-1200
Fax: (844) 345-3178
kbwooley@jonesday.com
jgustafson@jonesday.com
Attorneys for Defendant

F. **Memorandum of Understanding Superseded by this Agreement**

Upon the date that this Agreement becomes fully executed by all Parties, this Agreement shall supersede the Memorandum of Understanding between the Parties that was fully executed on November 17, 2025.

G. **Incorporation by Reference**

The terms of this Agreement include the Recitals, which are incorporated by this reference as though fully set forth herein.

H. **Captions**

The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.

I. **Mutual Preparation**

This Agreement has been jointly prepared by the Parties and their counsel. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, the Parties expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement, and 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.

J. **Waiver of Right to Appeal**

As part of this Settlement, Plaintiff waives her rights to file an appeal and/or a writ or any challenge whatsoever to the terms of the impending stipulated judgments.

K. **Entire Agreement**

This Agreement comprises the Parties' entire agreement. There are no other agreements, written or oral, express or implied, between the Parties with respect to the subject matter hereof except this Agreement. The Parties acknowledge that no representations, statements or promises made by any other party, or by their respective agents or attorneys, have been relied upon in entering into this Agreement. The Parties explicitly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and agree that no such extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this Agreement.

L. **Amendment or Modification**

This Agreement may be modified or amended only if such modification or amendment is agreed to in writing and signed by a duly authorized representative of the Parties hereto (and subject to any necessary Court approval), which writing shall expressly state the intent of the Parties to modify this Agreement.

M. **Severability**

The Parties to this Agreement agree, covenant, and represent that each and every provision of this Agreement shall be deemed to be contractual, and that they shall not be treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree, covenant, and represent that each provision of this Agreement shall be considered severable, except for the release provisions of Section XV of this Agreement. If the Court finds the release provisions of this Agreement to be unenforceable or invalid after the Parties' efforts to resolve any issues addressed by the Court as specified in Section XVII(T), then this Agreement shall become null and void and Defendant shall have no obligation to make any payments pursuant to this Agreement. If the Court finds any provision other than the release provisions of Section XV, or part thereof, to be invalid or unenforceable for any reason, that provision, or part thereof, shall remain in full force and effect to the extent allowed by law, and all of the remaining provisions of this Agreement shall remain in full force and effect.

N. **Waiver**

No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

O. **Execution and Counterparts**

This Agreement, and any other documents required or contemplated to be executed to consummate this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement. All counterparts of any such document together shall constitute one and the same instrument. Any Party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via facsimile or as an attachment to an e-mail to counsel for the other Party. Any signature made and transmitted by facsimile, email, DocuSign, or as an attachment to an e-mail for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party who transmits the signature page.

P. **Binding on Successors and Assigns**

This Agreement shall be binding upon, and shall inure to the benefit of the Parties, including Participating Class Members and PAGA Group Members, as well as their respective heirs, spouses, children, assigns, executors, administrators, successors, beneficiaries, subsidiaries, conservators, representatives, attorneys, estates, divisions and affiliated corporations and partnerships, past and present, and trustees, directors, officers, shareholders, partners, agents and employees, past and present, of the Parties.

Q. **California Law Governs**

All terms of this Agreement will be governed by and interpreted according to the laws of the State of California.

R. **Cooperation in Administration**

The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order, suggestion, or recommendation of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. The Parties' efforts to continue to cooperate and make all best efforts to obtain approval of this Agreement shall only cease after the Parties have exhausted all opportunities to amend or modify this Agreement, including seeking the assistance of the mediator, and the filing of any motions to obtain approval of this Agreement.

S. **All Terms Subject to Final Court Approval**

All amounts and procedures described in this Agreement herein will be subject to final Court approval.

T. **Disputes**

If the Parties have a dispute with regard to the language of this Agreement, they agree to first attempt to resolve the dispute informally through good-faith negotiations, including (if necessary) engaging the assistance of the mediator, but if those efforts are unsuccessful, the Court retains full jurisdiction to interpret, construe, and enforce the terms of this Agreement.

U. **Judgment and Continued Jurisdiction**

The Court shall retain jurisdiction pursuant to Code of Civil Procedure Section 664.6 over the implementation of this Agreement as well as any and all matters arising out of, or related to, the implementation of this Agreement and Settlement including post-judgment matters as may be appropriate under court rules or as set forth in this Agreement. In the event that an action is brought to enforce any of the terms of this Agreement, the prevailing party shall be entitled to its/his reasonable attorneys' fees and costs.

V. **Interim Stay of Proceedings**.

The Parties agree to refrain from further litigation, except such proceedings as necessary to seek and obtain preliminary and final settlement approval. If this Agreement is not finally approved, the Parties agree that they will revert to their positions in the Action prior to the time they entered into this Agreement, and no agreements set forth in this Agreement or any documents generated or orders issued related to this Agreement will be admissible in any future proceeding, in the Action or in any other action.

[Signature Page Follows]

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES. PLAINTIFF UNDERSTANDS THIS AGREEMENT CONTAINS A BROAD RELEASE OF CLAIMS.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

PLAINTIFF

Dated: 2/12/2026

DocuSigned by:
8CA75736E473454...
Natalie Spencer

DEFENDANT

Dated: ____________________

Name:
Title:
On behalf of Defendant BNSF Railway Company

Approved as to form and agrees to be bound by the confidentiality provisions in the Agreement:

MARQUEE LAW GROUP, APC

Dated: 2/12/2026

Signed by:
Tuvia Korobkin
A536AA1D0ED241F...
Tuvia Korobkin
Attorney for Plaintiff Natalie Spencer
and the putative class and aggrieved employees

JONES DAY

Dated: ____________________

Koree Wooley
Attorneys for Defendant

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES. PLAINTIFF UNDERSTANDS THIS AGREEMENT CONTAINS A BROAD RELEASE OF CLAIMS.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

PLAINTIFF

Dated: ____________________

____
Natalie Spencer

DEFENDANT

Dated: 2/12/26

____
Name: Jacob Flesher
Title: Associate General Counsel and AVP Claims
On behalf of Defendant BNSF Railway Company

Approved as to form and agrees to be bound by the confidentiality provisions in the Agreement:

MARQUEE LAW GROUP, APC

Dated: ____________________

____
Tuvia Korobkin
Attorney for Plaintiff Natalie Spencer
and the putative class and aggrieved employees

JONES DAY

Dated: 2/6/2026

____
Koree Wooley
Attorneys for Defendant

EXHIBIT 2

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Natalie Spencer v. BNSF Railway Company, et al.

Contra Costa County Superior Court Case No. C25-00652

The Superior Court for the State of California authorized this Notice. Read it Carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against BNSF Railway Company ("BNSF" or "Defendant") for alleged wage and hour violations. The Action was filed by former employee Natalie Spencer ("Plaintiff") and seeks (1) relief for a class of current and former engineers, conductors, and brakemen employed by Defendant and based in California ("Class Members") at any time during the Class Period (March 7, 2021 to January 31, 2026); and (2) penalties under the California Private Attorneys General Act ("PAGA") for all current and former engineers, conductors, and brakemen employed by Defendant and based in California at any time during the PAGA Period (March 7, 2024 to January 31, 2026) ("PAGA Group Members").

The proposed Settlement has two main parts: (1) a Class Settlement requiring BNSF to fund payments to Class Members ("Individual Settlement Payments"); and (2) a PAGA Settlement requiring BNSF to fund individual payments to PAGA Group Members ("Individual PAGA Amounts") and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on BNSF's records, **your Individual Settlement Payment is estimated to be $______ and your Individual PAGA Amount is estimated to be $______.** These are estimates; the actual amount you may receive may be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Amount, then according to Defendant's records you are not eligible for an Individual PAGA Amount under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Defendant's records showing that **you worked ________ pay periods** between March 7, 2024 and January 31, 2026 (the "Wage Statement Period"), **worked ______ months** during the Class Period, and **you worked ______ pay periods** during the PAGA Period. If you believe that you worked more months and/or pay periods during any of these periods, you can submit a challenge by the deadline date. *See* Section 4 of this Notice.

The Court has preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires BNSF to make payments under the Settlement and requires Class Members and PAGA Group Members to give up their rights to assert certain claims against BNSF.

If you worked for BNSF during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Settlement Payment and/or an Individual PAGA Amount. As a Participating Class Member, though, you will give up your right to assert the Released Claims against Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion to the Administrator.. If you opt-out of the Settlement, you will not receive an Individual Settlement Payment. You will, however, preserve your right to personally pursue the Released Claims against BNSF, and, if you are a PAGA Group Member, remain eligible for an Individual PAGA Amount. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Settlement Payment and an Individual PAGA Amount (if any). In exchange, you will give up your right to assert the wage and hour claims against BNSF that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement **The Opt-out Deadline is ________________**	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Settlement Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. *See* Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. BNSF must pay Individual PAGA Amounts to all PAGA Group Members and the PAGA Group Members must give up their rights to pursue Released PAGA Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You

Written Objections Must be Submitted by ___________	are not personally responsible for any payments to Class Counsel or Plaintiff. You can object to any aspect of the settlement, including any of the requested deductions described in section 3(b) below. For more information on objecting see Section 7 of this Notice.
You Can Participate in the ___________ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on ___________. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. *See* Section 8 of this Notice.
You Can Challenge the Calculation of Your Months Worked/Pay Periods **Written Challenges Must be Submitted by ___________**	The amount of your Individual Settlement Payment depends on how many months you were based in California and received pay for time worked during the Class Period and how many pay periods you were based in California and received pay for time worked during the Wage Statement Period, provided, however, that each Reimbursement Group Member shall receive at least a minimum individual payment ("Individual Reimbursement Payment") equivalent to the figure paid to those Reimbursement Group Members who had one month during which they received pay for time worked during the Class Period, and that each Wage Statement Group Member shall receive at least a minimum individual payment ("Individual Wage Statement Payment") equivalent to the figure paid to those Wage Statement Group Members who had one pay period during which they received pay for time worked during the Wage Statement Period. The amount of your Individual PAGA Amount depends on how many pay periods you were based in California and received pay for time worked during the PAGA Period, provided, however, that each PAGA Group Member shall receive at least a minimum Individual PAGA Amount equivalent to the figure paid to those PAGA Group Members who had one pay period during which they received pay for time worked during the PAGA Period. The number of individual months and/or pay periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by ___________. *See* Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of BNSF. The Action accuses BNSF of violating California labor laws by failing to reimburse certain business expenses and provide accurate itemized wage statements to certain employees of BNSF based in California. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys

General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Tuvia Korobkin and Alex Purcell of Marquee Law Group, A.P.C. ("Class Counsel.")

BNSF strongly denies violating any laws or failing to reimburse certain business expenses or provide accurate itemized wage statements, and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether BNSF or Plaintiff is correct on the merits. In the meantime, Plaintiff and BNSF hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and BNSF have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, BNSF does not admit any violations or concede the merit of any claims. The Court preliminarily approved the proposed Settlement, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

A. <u>BNSF Will Pay $2,000,000 as the Gross Settlement Amount (Gross Settlement).</u> BNSF has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Settlement Payments, Individual PAGA Amounts, Class Representative Enhancement Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA").

B. <u>Court Approved Deductions from Gross Settlement.</u> At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing (see section 8 for more details on the Final Approval Hearing):

   i. Up to $666,667.00 (one-third (1/3) of the Gross Settlement) to Class Counsel for attorneys' fees and up to $30,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

   ii. Up to $5,000.00 as a Class Representative Enhancement Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Enhancement Payment will be the only monies Plaintiff will receive under the Settlement other than Plaintiff's Individual Settlement Payment and any Individual PAGA Amount.

iii. Up to $20,000.00 to the Administrator for services administering the Settlement.

iv. Up to $200,000.00 for PAGA Penalties, allocated 65% to the LWDA Payment and 35% in Individual PAGA Amounts to the PAGA Group Members based on their Individual PAGA Pay Periods.

C. <u>Net Settlement Distributed to Class Members.</u> After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Settlement Payments to Participating Class Members based on their Class Period months and/or pay periods worked.

D. <u>Net Settlement Amount Allocation.</u> Eighty percent (80%) of the Net Settlement amount shall be allocated as payment to the conductors, engineers, and brakemen employed by Defendant and based in California at any time between March 7, 2024 and January 31, 2026 (the "Wage Statement Group") as settlement of Plaintiff's claim for failure to provide accurate wage statements pursuant to the California Labor Code (the "Wage Statement Settlement Amount"). The remainder of the Net Settlement amount shall be allocated as payment to the conductors, engineers, and brakemen employed by Defendant and based in California at any time between March 7, 2021 and January 31, 2026 (the "Reimbursement Group") as settlement of Plaintiff's claim for failure to reimburse all necessary business expenses pursuant to the California Labor Code (the "Reimbursement Settlement Amount").

E. <u>Taxes Owed on Payments to Class Members.</u> Given the nature of Plaintiff's claims, no portion of the Individual Settlement Payments shall be considered taxable wages and no payroll taxes will be withheld. Neither Plaintiff, BNSF, nor their lawyers can provide tax advice. Class Members are encouraged to consult a tax professional regarding potential tax consequences from payments received under the Settlement.

F. <u>Need to Promptly Cash Payment Checks.</u> The front of every check issued for Individual Settlement Payments and Individual PAGA Amounts will show the date when the check expires (the void date). If you don't cash your check by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check are sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

G. <u>Requests for Exclusion from the Class Settlement (Opt-Outs).</u> You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than ______________, that you wish to opt-out. The procedure for opting out is described in more detail in Section 6 below If you wish to opt out, you must send a written and signed Request for Exclusion by the ______________ Response Deadline. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Settlement Payments, but will preserve their rights to personally pursue wage and hour claims against BNSF.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Amounts and are required to give up their right to assert the Released PAGA Claims against BNSF.

H. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

I. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over pay periods and/or months worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

J. Participating Class Members' Release.
Each Class Member who does not timely opt-out of the settlement, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which any of them have a controlling ownership interest, shall fully and finally release and discharge Defendant, and its respective former and present parents, subsidiaries, affiliated corporations and entities, successors, insurers, clients, and vendors and independent contractors through which Defendant conducts business, and each of their respective current, former, and future officers, directors, members, managers, employees, consultants, vendors, independent contractors, clients, partners, shareholders, joint venturers and third-party agents, and any successors, assigns, legal representatives, or any individual or entity which could be jointly liable with Defendant and all persons or entities acting by, through, under, or in concert with any of them ("Released Parties"), from any and all claims, rights, demands, liabilities, and causes of action of any kind arising from the alleged violation of any provision of common law, California law and/or federal law that occurred during the Class Period that were pled in the Action, or Plaintiff's LWDA letter, or which could have been pled based on the facts alleged and theories asserted in the Action, including claims for: failure to reimburse all necessary business expenses (California Labor Code §§ 1198, 2800, 2802, 2804); violation of the IWC California Wage Orders based on the violations alleged in the Complaint; failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3); failure to maintain records (Cal. Lab. Code § 226, 1174, 1174.5); unfair competition in violation of California Business and Professions Code section 17200 et seq. based on the above violations; Code of Civil Procedure § 1021.5 based on the above violations; and any damages, penalties, restitution, disgorgement, interest, costs, or attorneys' fees as a result thereof that arose during the Class Period ("Released Claims"). The Released Claims do not include claims to enforce this Agreement or claims that may not be released as a matter of law, including, for example, claims for vested benefits

under an ERISA, 401(k), or similar plan, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside of the Class Period.

K. PAGA Group Members' Release.
All PAGA Group Members waive, fully release and forever discharge the Released Parties from any and all claims under the PAGA, California Labor Code §§ 2699 et seq. arising from claims pled in the Action, or Plaintiff's LWDA letter, or that could have been asserted based on the facts alleged or theories asserted in the Action against Defendant, including, but not limited to, claims for: failure to reimburse all necessary business expenses (California Labor Code §§ 1198, 2800, 2802, 2804); violation of the IWC California Wage Orders; failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3); failure to maintain records (Cal. Lab. Code § 226, 1174, 1174.5); unfair competition in violation of California Business and Professions Code section 17200 et seq.; Code of Civil Procedure § 1021.5; and any damages, penalties, restitution, disgorgement, interest, costs, or attorneys' fees as a result thereof that arose during the PAGA Period ("Released PAGA Claims").

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

A. Individual Settlement Payments. The Administrator will calculate Individual Settlement Payments in two parts. For the Wage Statement Group, the Administrator will divide the Wage Statement Settlement Amount by the total number of pay periods worked by all Wage Statement Group members to determine the per-pay-period rate (the "Wage Statement Payment Rate"). The Individual Wage Statement Payment for each Wage Statement Group Member will be the Wage Statement Payment Rate multiplied by the number of individual pay periods each Wage Statement Group Member worked during the Wage Statement Period. Provided, however, that each Wage Statement Group member shall receive at least a minimum Individual Wage Statement Payment equivalent to the figure paid to those Wage Statement Group members who had one pay period during which they received pay for time worked during the Wage Statement Period. For the Reimbursement Group, the Administrator will divide the Reimbursement Settlement Amount by the total number of months worked by all Reimbursement Group Members to determine the per-month rate (the "Reimbursement Payment Rate"). The Individual Reimbursement Payment for each Reimbursement Group Member will be the Reimbursement Payment Rate multiplied by the total number of individual months worked during the Class Period. Provided, however, that each Reimbursement Group member shall receive at least a minimum Individual Reimbursement Payment equivalent to the figure paid to those Reimbursement Group members who had one month during which they received pay for time worked during the Class Period.

B. Individual PAGA Amounts. The Administrator will calculate Individual PAGA Amounts by (a) dividing the amount of the PAGA Group Payment ($70,000.00) by the total number of Pay Periods, and (b) multiplying the result by each PAGA Group Member's individual pay periods worked during the PAGA Period. Provided, however, that each PAGA Group Member shall receive at least a minimum Individual PAGA Amount equivalent to the figure paid to those PAGA Group Members who had one pay period during which they received pay for time worked during the PAGA Period.

C. Months/Pay Periods Worked Challenges. The number of individual months and/or pay periods you worked during the Class Period and the number of Individual PAGA Pay Periods you worked during the PAGA Period, as recorded in BNSF's records, are stated in the first page of this Notice. You have until ______________ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept BNSF's calculation of individual months and/or pay periods based on BNSF's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve month and/or pay period worked challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and BNSF's Counsel.

5. HOW WILL I GET PAID?

A. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as PAGA Group Members. The single check will combine the Individual Settlement Payment and the Individual PAGA Amount.

B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Amount check to every PAGA Group Member who opts out of the Class Settlement (i.e., every Non-Participating Class Member who is also a PAGA Group member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

If you wish to opt out of the Settlement, you must do so by submitting a written Request for Exclusion to the Administrator. Specifically, you must submit a written and signed letter with your name, present address, telephone number, approximate dates of employment, and a statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Natalie Spencer v. BNSF Railway Company*, and include your identifying information (full name, address, telephone number, and approximate dates of employment for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Any Request for**

Exclusion must be sent to the Administrator by ______________, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Participating Class Members may submit a written objection and/or object orally at the Final Approval Hearing.

The deadline for sending written objections to the Administrator is _______________. If you wish to send a written objection, be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Natalie Spencer v. BNSF Railway Company* and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You do not need to send a written objection in order to object orally at the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. *See* Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing. Any attorney who plans to represent an objecting Participating Class Member at the Final Approval Hearing must file a Notice of Appearance with the Court by ______________. As noted, a Participating Class Member may object to any aspect of the Settlement Agreement. Prior to the Final Approval Hearing, Plaintiff will file a Motion for Final Approval, which will include requests for Class Counsel's fees, litigation costs, Administrator expenses, and the other deductions described in Section 3(b) above. The requests for fees, costs, and other deductions will not exceed the amounts listed in Section 3(b). The Final Approval Motion will be posted to the Settlement website at: __<url>___

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on ____________ at _(time)_ in Department 39 of the Contra Costa Superior Court, located at 725 Court St, Martinez, CA 94553. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement, including to consider all requested payments described in section 3(b). You can attend (or hire a lawyer to attend) either personally or virtually via the Court's website (https://contracosta.courts.ca.gov/online-services/court-calendars). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website ______________________________ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement or any other Settlement documents is to go to the website that ILYM Group, Inc has established for this settlement: ______(url)______. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (https://odyportal.cc-courts.org/portal) and entering the Case Number for the Action, Case No. C25-00652. You can also personally review court documents in the Wakefield Taylor Courthouse at 725 Court Street, Room 103, Martinez, California 94553.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:
Name of Attorneys: Tuvia Korobkin and Alex Purcell
Email Address: tuvia@marqueelaw.com
Name of Firm: Marquee Law Group, A.P.C.
Mailing Address: 9100 Wilshire Boulevard, Suite 445 East Tower, Beverly Hills, CA 90212
Telephone: (310) 275-1844

Settlement Administrator:
Name of Company: ILYM Group, Inc.
Email Address:
Mailing Address:
Telephone:
Settlement website:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund https://www.sco.ca.gov/Files-UPD/guide_upd_claiming.pdf for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.