

1 Michael Nourmand, Esq. (SBN 198439)
James A. De Sario, Esq. (SBN 262552)
2 **THE NOURMAND LAW FIRM, APC**
8822 West Olympic Boulevard
3 Beverly Hills, California 90211
Telephone: 310.553.3600
4 Facsimile: 310.553.3603
Email: mnourmand@nourmandlawfirm.com
5 jdesario@nourmandlawfirm.com

6 Attorneys for Plaintiff,
JULIUS RAY WINTERS, on behalf of himself and all
7 others similarly situated

8 Megan E. Ross, Esq.
9 **SCOPELITIS, GARVIN, LIGHT**
HANSON & FEARY, LLP
10 2 North Lake Avenue, Suite 560
Pasadena, California 91101
11 Telephone: 626.795.4700
Facsimile: 626.795.4790
12 Email: mross@scopelitis.com

13 Attorneys for Defendants,
THE DEPENDABLE COMPANIES,
14 DEPENDABLE DISTRIBUTION CENTERS and
DEPENDABLE HIGHWAY EXPRESS, INC.

15 [COUNSEL CONTINUED]

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE
18

19 JULIUS RAY WINTERS, on behalf of himself
and all others similarly situated,

20 Plaintiffs,
21

22 v.

23 THE DEPENDABLE COMPANIES, a
business entity form unknown;
DEPENDABLE DISTRIBUTION CENTERS,
24 a business entity form unknown;
DEPENDABLE HIGHWAY EXPRESS, INC.,
25 a California corporation; CITISTAFF
SOLUTIONS, INC., a California corporation;
26 and DOES 1 through 100, Inclusive

27 Defendants.
28

CASE NO.: BC 623 839

[Assigned for all purposes to the Hon. Ann
I. Jones - Dept. 11]

**JOINT STIPULATION FOR CLASS
ACTION SETTLEMENT**

1 Charles C. Slater, Esq.
2 **CITISTAFF SOLUTIONS, INC., General Counsel**
3 1111 West Town & Country Road, Suite 30
4 Orange, California 92868
5 Telephone: 657.333.8090
6 Facsimile: 657.288.4000
7 Email: cslater@citistaffsolutions.com

8 Attorneys for Defendant,
9 CITISTAFF SOLUTIONS, INC.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 TO THE COURT:

2 This Joint Stipulation of Class Action Settlement (“Settlement Agreement”) is made and
3 entered into by and between JULIUS RAY WINTERS (“Plaintiff”), individually and on behalf
4 of all others similarly situated, and THE DEPENDABLE COMPANIES, DEPENDABLE
5 DISTRIBUTION CENTERS, DEPENDABLE HIGHWAY EXPRESS, INC. (“Dependable”)¹
6 and CITISTAFF SOLUTIONS, INC. (“Citistaff”) (Dependable and Citistaff, collectively
7 referred to as “Defendants”) (Plaintiff and Defendants collectively referred to as the “Parties”),
8 and is subject to the terms and conditions below, and to the Court’s approval. The Parties
9 expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of
10 compromising significantly disputed claims and that nothing in this Settlement Agreement is an
11 admission of liability or wrongdoing by Defendants. If for any reason the Settlement
12 Agreement is not approved, it will be of no force or effect, and the Parties will be returned to
13 their respective positions immediately prior to and as if they had never executed this Settlement
14 Agreement as more fully set forth below.

15 DEFINITIONS

16 The following definitions are applicable to this Settlement Agreement. Definitions
17 contained elsewhere in this Settlement Agreement will also be effective:

18 1. “Action” means *Julius Ray Winters v. The Dependable Companies, et al*, Los
19 Angeles County Superior Court Case No. BC623839.

20 2. “Claims Administrator” means Simpluris, Inc. or any other third-party class
21 action settlement claims administrator agreed to by the Parties and approved by the Court for
22 the purposes of administering this Settlement. The Parties each represent that they do not have
23 any financial interest in the Claims Administrator or otherwise have a relationship with the
24 Claims Administrator that could create a conflict of interest.

25
26 ¹ Dependable contends that the entities named as THE DEPENDABLE COMPANIES and
27 DEPENDABLE DISTRIBUTION CENTERS were improperly named as they were trade names
28 used for marketing purposes during the Class Period and were not independent entities subject to
legal action. Additionally, during the Class Period, the trade name of THE DEPENDABLE
COMPANIES was replaced with the trade name DEPENDABLE SUPPLY CHAIN SERVICES
for marketing purposes.

1 3. “Claims Administration Expenses” means the costs payable to the Claims
2 Administrator for administering this Settlement, including, but not limited to, printing,
3 translating into Spanish, distributing (including with appropriate postage), and tracking
4 documents for this Settlement in English and Spanish, any searches to locate any Class
5 Members, tax reporting, distributing the Individual Settlement Payments, Class Representative
6 Enhancement Payment, Class Counsel Fees and Costs, and providing necessary certification of
7 completion of notice, reports and declarations, establishing and administering a qualified
8 settlement fund account and other responsibilities set forth in this Settlement Agreement and as
9 requested by the Parties. The Claims Administration Expenses are currently estimated to be not
10 more than twenty-two thousand five hundred dollars (\$22,500.00).

11 4. “Class Counsel” means Michael Nourmand and James A. De Sario of The
12 Nourmand Law Firm, APC.

13 5. “Class Counsel Fees and Costs” means attorneys’ fees, costs, and expenses
14 approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs
15 incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs
16 associated with documenting the Settlement, providing any notices required as part of the
17 Settlement or Court order, securing the Court’s approval of the Settlement, administering the
18 Settlement, and obtaining entry of the Judgment terminating the Action. Class Counsel will
19 request attorneys’ fees not to exceed 33% of the Gross Settlement Amount or three hundred
20 thirty-three thousand three hundred thirty-three dollars and no cents (\$333,333.00) and
21 litigation costs and expenses not to exceed thirteen thousand dollars (\$13,000.00). Defendants
22 have agreed not to oppose Class Counsel’s request for Class Counsel Fees and Costs at these
23 amounts.

24 6. “Class List” means a complete list of all Class Members that Defendants will
25 diligently and in good faith compile from their records and provide to the Claims Administrator
26 within ten (10) calendar days after the Court’s entry of an order granting preliminary approval
27 of this Settlement. The Class List will be formatted in Microsoft Office Excel and Defendants
28

1 will use their best efforts to include each Class Member's full name; most recent mailing
2 address and telephone number; dates of employment or number of workweeks worked during
3 the Class Period; and Social Security number.

4 7. "Class Member(s)" or "Settlement Class" means the following: (a) **Dependable**
5 **Employees**, defined as all current and former direct hire non-exempt hourly employees of
6 Dependable who worked at its facility or facilities in California during the period of April 2,
7 2016² to March 22, 2018³; and (b) **Citistaff Temporary Employees**, defined as all current and
8 former temporary non-exempt hourly employees of Citistaff placed to work at a Dependable
9 facility or facilities in California during the period of March 15, 2015 to March 22, 2018.
10 Defendants confirm that there are approximately three thousand four hundred (3,400) direct
11 hire non-exempt and temporary non-exempt employees during the Class Period and
12 approximately one hundred seven thousand five hundred (107,500) workweeks.

13 8. "Class Period" means the following: (a) **Dependable Class Period**, is defined as
14 the period from April 2, 2016 through March 22, 2018; and (b) **Citistaff Class Period**, defined
15 as the period from March 15, 2015 through March 22, 2018.

16
17
18 ² A class wide settlement was reached in the action entitled *Munoz, et al. v. Dependable Highway*
19 *Express, Inc.*, Los Angeles Superior Court Case Number BC535931 and the related cases of
20 *Albert Johnson v. Dependable Highway Express, Inc.*, Case No. BC536340, and *Jorge Cruz v.*
21 *Dependable Highway Express, Inc.*, Case No. BC553132 (collectively the "Munoz Action"),
22 which covered claims on behalf of Dependable's direct hire non-exempt employees for, among
23 other things, alleged unpaid overtime, unpaid minimum wage, meal and rest period violations,
derivative penalties under Labor Code Sections 203 and 226, and penalties under the Private
Attorneys General Act, Cal. Labor Code § 2699, *et. seq.* ("PAGA"). The release in the Munoz
Action released the claims during the period of February 10, 2010 to April 1, 2016. Therefore,
the release in the Munoz Action would not cover claims starting from April 2, 2016 on behalf of
Dependable's direct hire non-exempt employees.

24 ³ Dependable also reached a settlement in an action entitled *Lucas v. Dependable Highway*
25 *Express, Inc.*, Case No. BC 660638 (the "Lucas Action") which covered claims made by
26 employee drivers categorized as "shuttle drivers" for penalties under PAGA for violations of
27 Labor Code Sections 201, 202, 203, 204, 226, 226.3, 1174, 1174.5 and 2802. The release in the
28 Lucas Action released the PAGA claims for 132 shuttle drivers who were considered aggrieved
employees under PAGA for the period from February 28, 2016 to February 27, 2018 (the "Shuttle
Drivers"). Therefore, based upon the release in the Lucas Action, the Shuttle Drivers are limited
in this case to asserting any PAGA claims they may have during the period of February 28, 2018
through March 22, 2018, but may receive a share of the settlement of the remaining claims in this
case throughout the Dependable Class Period as further discussed in Paragraph 29.

1 9. “Class Representative Enhancement Payment” means the amount to be paid from
2 the Gross Settlement Amount to the named Plaintiff in exchange for executing a general release
3 and in recognition of his effort in prosecuting the Action on behalf of Class Members. Plaintiff
4 will request and Defendants will not oppose Plaintiff’s application to the court for a payment of
5 seven thousand dollars (\$7,000.00) to the named Plaintiff for his willingness to serve as Class
6 Representative.

7 10. “Court” means the Los Angeles County Superior Court, or any other court taking
8 jurisdiction of the Action.

9 11. “Effective Date” means the date when the Final Approval Order becomes final.
10 For purposes of this Paragraph, the Final Approval Order “becomes final” upon the last to occur
11 of the following: (a) if there are no objections to the Settlement, the date the Court enters an
12 order granting final approval of the Settlement; or (b) if there are objections to the Settlement,
13 and if an appeal, review, or writ is not sought from the Final Approval Order, the day after the
14 time period to appeal the Settlement has expired, i.e., 60 days from the date the Court enters an
15 order granting final approval of the Settlement or (c) if a timely appeal is filed, the date of final
16 resolution of that appeal (including any requests for rehearing and/or petitions for certiorari),
17 resulting in final judicial approval of the Settlement.

18 12. “Gross Settlement Amount” means the maximum settlement amount of one
19 million dollars (\$1,000,000.00) (“Gross Settlement Amount”), which has been and/or will be
20 paid by Defendants in full satisfaction of all claims arising from the Action. The Gross
21 Settlement Amount includes all Individual Settlement Payments to Participating Class
22 Members, the Class Representative Enhancement Payment, Claims Administration Expenses,
23 Class Counsel Fees and Costs, PAGA penalties in the amount of ten thousand dollars
24 (\$10,000.00) of which 75% or seven thousand five hundred (\$7,500.00) will be paid to the
25 Labor Workforce Development Agency (“LWDA”) and 25% or two thousand five hundred
26 (\$2,500.00) to Participating Class Members, Defendants’ share of payroll taxes and any other
27 obligations of Defendants under this Settlement Agreement.
28

1 13. “Individual Settlement Payment” means each Participating Class Member’s
2 share of the Net Settlement Amount, to be distributed to Plaintiff and Class Members who do
3 not request exclusion from the settlement.

4 14. “Net Settlement Amount” means the maximum amount available for distribution
5 to the Class Members, after deduction of Class Counsel Fees and Costs, Class Representative
6 Enhancement Payments, Claims Administration Expenses, \$7,500.00 as PAGA penalties
7 payable to the LWDA and Defendants’ share of payroll taxes.

8 15. “Notice of Objection” means a Class Member’s valid and timely written
9 objection to the Settlement Agreement. For the objection to be valid, it must include: (i) the
10 objector’s full name, signature, address, and telephone number; (ii) a written statement of all
11 grounds for the objection accompanied by any legal support for such objection; (iii) copies of
12 any papers, briefs, or other documents upon which the objection is based; (iv) a list of all
13 persons who will be called to testify in support of the objection; and (v) a statement whether the
14 objector intends to appear at the Final Approval hearing. The Parties will be permitted to
15 respond in writing to such objections within the time period set by the Court.

16 16. “Notice Packet” means the Notice of Class Action Settlement, substantially in
17 the form attached as Exhibit A.

18 17. “Participating Class Members” means all Class Members who do not submit
19 valid Requests for Exclusion.

20 18. “Preliminary Approval” means the Court order granting preliminary approval of
21 the Settlement Agreement.

22 19. “Released Claims” means wage and hour claims, rights, demands, liabilities,
23 penalties, interest and causes of action and derivative claims related thereto, arising from or
24 related to the claims pled in Plaintiff’s First Amended Complaint (“Complaint”) or that could
25 have been pled in the Complaint based on the factual allegations pled in the Complaint,
26 including, claims for failure to pay overtime wages, failure to pay minimum wages, failure to
27 provide meal periods, failure to provide rest periods, failure to pay all wages upon termination,
28

1 failure to provide accurate wage statements, unfair competition claims under California
2 Business & Professions Code §17200, et seq., civil penalties pursuant to Labor Code §2699, et
3 seq., and IWC Wage Order No. 9 and any damages, penalties, restitution, disgorgement, interest
4 or attorneys' fees that could have been pled in the Complaint based on the factual allegations
5 pled in the Complaint. This release will cover all Class Members who do not opt out of this
6 settlement.

7 20. "Released Parties" means Defendants and Defendants' former and present
8 parents, subsidiaries and affiliated companies and entities and their current, former and future
9 owners, officers, directors, members, managers, employees, consultants, partners, affiliates,
10 subsidiaries, shareholders, attorneys, insurers, reinsurers, joint venturers and agents, any
11 successors, assigns, or legal representatives and any individual or entity who or which could be
12 jointly liable with Defendants and all persons or entities acting by, through, under or in concert
13 with any of them.

14 21. "Request for Exclusion" means a timely letter submitted by a Class Member
15 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a)
16 set forth the name, address, telephone number and last four digits of the Social Security
17 Number of the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be
18 returned by mail to the Claims Administrator at the specified address indicated in the Notice
19 Packet; (d) clearly state that the Class Member does not wish to be included in the Settlement;
20 and (e) be faxed or postmarked on or before the Response Deadline.

21 22. "Response Deadline" means the deadline by which Class Members must fax or
22 postmark to the Claims Administrator a valid Request for Exclusion or submit objections to the
23 Settlement. The Response Deadline will be forty-five (45) calendar days from the initial
24 mailing of the Notice Packet by the Claims Administrator. The Response Deadline for Request
25 for Exclusion and objections will be extended fifteen (15) calendar days for any Class Member
26 who is re-mailed a Notice Packet by the Claims Administrator in accordance with the notice
27
28

1 procedure described in Paragraphs 34 through 37 of this Settlement Agreement. The Response
2 Deadline may also be extended by express agreement between Class Counsel and Defendants.

3
4 **TERMS OF AGREEMENT**

5 Plaintiff, on behalf of himself and the Settlement Class, and Defendants agree as
6 follows:

7 23. Impact of Any Court Determination Not to Enter Final Approval Order. In the
8 event that the Court does not enter a Final Approval Order and this Settlement Agreement does
9 not become effective, the following will occur:

- 10 a. On the date final approval is denied, the status of the Action will be
11 deemed to return to its status at the time immediately prior to and as if the
12 Parties had never executed this Settlement Agreement; and
13 b. To the extent required by any court or otherwise necessary, Plaintiff will
14 take all necessary steps to give effect to subparagraph a. above.
15 c. Defendants will pay fifty percent (50%) of any costs incurred by the
16 Claims Administrator and Plaintiff will pay fifty percent (50%) of any
17 costs incurred by the Claims Administrator.

18 24. Settlement Funding. Within three (3) calendar days of the Effective Date, the
19 Claims Administrator will provide Defendants with a calculation of the portion of the Gross
20 Settlement Amount actually to be paid out to Participating Class Members, i.e., individual
21 settlement payments, as well as the employer's share of payroll taxes payable on account of the
22 portion of the Gross Settlement Amount allocated as wages under the terms of this Agreement.
23 Within three (3) calendar days of receiving this information from the Claims Administrator,
24 Defendants will make a one-time deposit of one million dollars (\$1,000,000.00) (referred to as
25 the "Settlement Fund Deposit Amount") into a Qualified Settlement Fund account from which
26 the Claims Administrator will have authority to distribute money in accordance with the terms
27 of this Settlement Agreement.
28

1 25. Class Counsel Fees and Costs. Defendants agree not to oppose or impede any
2 application or motion by Class Counsel for Class Counsel Fees of three hundred thirty-three
3 thousand three hundred thirty-three dollars and no cents (\$333,333.00) plus the reimbursement
4 of costs and expenses associated with Class Counsel's litigation and settlement of the Action,
5 not to exceed thirteen thousand dollars (\$13,000.00). In consideration of their awarded
6 attorneys' fees and costs and expenses, Plaintiff and Class Counsel waive any and all claims to
7 any further attorneys' fees and expenses in connection with the Action.

8 26. Class Representative Enhancement Payment. In exchange for the named
9 Plaintiff executing a general release and in recognition of his effort in prosecuting the Action on
10 behalf of Class Members, Defendants agree not to oppose or impede any application or motion
11 for a Class Representative Enhancement Payment of seven thousand dollars (\$7,000.00) to
12 named Plaintiff. The Class Representative Enhancement Payment, which will be paid from the
13 Gross Settlement Amount, will be in addition to Plaintiff's Individual Settlement Payment paid
14 pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and all
15 applicable taxes, penalties and interest on the payment made pursuant to this paragraph.

16 27. Claims Administration Expenses. The Claims Administrator will be paid for the
17 reasonable fees and costs of administration of the Settlement, which are estimated not to exceed
18 twenty-two thousand five hundred dollars (\$22,500.00). These will include, *inter alia*, fees and
19 costs payable to the Claims Administrator for printing, translating into Spanish, distributing
20 (including with appropriate postage), and tracking documents for this Settlement in English and
21 Spanish; any searches to locate any Class Members; calculating estimated amounts per Class
22 Member; tax reporting; distributing the Individual Settlement Payments, Class Representative's
23 Enhancement Payment, Class Counsel Fees and Costs, and payment to LWDA for PAGA
24 penalties; providing necessary certification of completion of notice, reports and declarations;
25 establishing and administering a Qualified Settlement Fund account; required tax reporting on
26 the Individual Settlement Payments; the issuing of 1099 and W-2 IRS forms; calculating the
27 employer's share of payroll taxes on the wage portion of the Individual Settlement Payments;
28

1 paying said payroll taxes on Defendants' behalf from the Settlement Fund Deposit Amount; and
2 other responsibilities as requested by the Parties.

3 28. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
4 Individual Settlement Payments to Participating Class Members from the Settlement Class in
5 accordance with the terms of this Agreement.

6 29. Individual Settlement Payment Calculations. Defendants will provide the Claims
7 Administrator with the total number of compensable workweeks for each Participating Class
8 Member. The Claims Administrator will divide the Net Settlement Amount by the total number
9 of compensable workweeks ("Work Week Rate Amount") during the applicable Class Period,
10 as defined above, and then multiply this amount by each Participating Class Member's total
11 number of compensable workweeks to yield that Participating Class Member's Individual
12 Settlement Payment.

13
14 NET
15 SETTLEMENT
16 AMOUNT

X

Participating
Class Member's
Compensable
Workweeks

17
18 Total number of
19 Compensable
20 Workweeks for
21 all Participating
22 Class Members

19 The settlement in the Lucas Action, entitled *Lucas v. Dependable Highway Express,*
20 *Inc.*, Case No. BC 660638, released PAGA claims for 132 Shuttle Drivers for the period from
21 February 28, 2016 to February 27, 2018. Therefore, because of the settlement and release of
22 their PAGA claims for the majority of the Dependable Class Period, the Shuttle Drivers from
23 the Lucas Action will be credited the gross amount received for their individual settlement
24 payment in the Lucas Action towards their Individual Settlement Payment. For instance, if the
25 workweek value in this matter is \$10 per workweek and the total number of workweeks for a
26 Shuttle Driver is 50 workweeks, the Individual Settlement Payment for this individual would be
27 \$500 (50 workweeks x \$10 = \$500). Thus, under this example, the Claims Administrator would
28 credit the gross amount received for his or her individual settlement payment in the Lucas

1 Action, for example, if this individual received a gross individual settlement amount in the
2 Lucas Action of \$115, the \$115 would be deducted from the \$500 that the individual would be
3 entitled to in this action, thereby the adjusted gross payment for this individual would be \$385
4 as the Individual Settlement Payment. Additionally, should the Individual Settlement Payment
5 for a Shuttle Driver be less than the gross amount received for the individual settlement
6 payment in the Lucas Action, the individual will receive the value of one (1) workweek for the
7 Individual Settlement Payment.

8 In the event that a Class Member opts-out, his/her individual share of the settlement
9 will be redistributed to participating Class Members pursuant to the formula provided herein.

10 30. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
11 Participating Class Members under this Agreement, as well as any other payments made
12 pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits
13 under any benefit plans to which any Class Members may be eligible, including, but not limited
14 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick
15 leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this
16 Settlement Agreement will not affect any rights, contributions, or amounts to which any Class
17 Members may be entitled under any benefit plans.

18 31. Claims Administration Process. The Parties agree to cooperate in the
19 administration of the settlement and to make all reasonable efforts to control and minimize the
20 costs and expenses incurred in administration of the Settlement.

21 32. Delivery of the Class List. Within ten (10) calendar days following Preliminary
22 Approval, Defendants will provide the Class List to the Claims Administrator.

23 33. Notice by First-Class U.S. Mail. Within five (5) calendar days after receiving
24 the Class List from Defendants, the Claims Administrator will mail a Notice Packet to all Class
25 Members via regular First-Class U.S. Mail.

26 34. Confirmation of Contact Information in the Class Lists. Prior to mailing, the
27 Claims Administrator will perform a search based on the National Change of Address Database
28

1 for information to update and correct for any known or identifiable address changes. Any
2 Notice Packets returned to the Claims Administrator as non-deliverable on or before the
3 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
4 address, and the Claims Administrator will indicate the date of such re-mailing on the Notice
5 Packet. If no forwarding address is provided, the Claims Administrator will promptly attempt
6 to determine the correct address using a skip-trace, or other search using the name, address
7 and/or Social Security number of the Class Member involved, and will then perform a single re-
8 mailing. Those Class Members who receive a re-mailed Notice Packet will have between the
9 latter of (i) an additional fifteen calendar (15) days or (ii) the Response Deadline to fax or
10 postmark a Request for Exclusion or submit an objection to the Settlement.

11 35. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
12 Packet will provide: (1) information regarding the nature of the Action, (2) a summary of the
13 Settlement's principal terms, (3) the Settlement Class definition, (4) each Class Member's
14 number of compensable workweeks worked during the Class Period, (5) each Class Member's
15 estimated Individual Settlement Payment; (6) the dates which comprise the Class Period, (7)
16 instructions on how to submit valid Requests for Exclusion or objections, (8) the deadlines by
17 which the Class Member must fax or postmark Request for Exclusions or submit objections to
18 the Settlement, and (9) the Released Claims, as set forth in this Settlement Agreement.

19 36. Request for Exclusion Procedures. Any Class Member wishing to opt out from
20 the Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the
21 Claims Administrator within the Response Deadline. The date of the fax or postmark on the
22 return mailing envelope will be the exclusive means to determine whether a Request for
23 Exclusion has been timely submitted. The Parties to this Agreement and their counsel agree that
24 they will not solicit or encourage Class Members to opt-out or object to this Settlement
25 Agreement. Defendants shall have the right, at their sole discretion, to terminate the settlement
26 if 5% or more of Class Members timely elect to opt-out of the settlement. If Defendants
27 exercise their right under this paragraph, they shall be solely liable for administrative costs.
28

1 37. Defective Submissions. If a Class Member's Request for Exclusion is defective
2 as to the requirements listed in this Settlement Agreement, that Class Member will be given an
3 opportunity to cure the defect(s). The Claims Administrator will mail the Class Member a cure
4 letter within three (3) calendar days of receiving the defective submission to advise the Class
5 Member that his or her submission is defective and that the defect must be cured to render the
6 Request for Exclusion valid. The Class Member will have until the later of the (i) Response
7 Deadline or (ii) fifteen (15) calendar days from the date of the cure letter to fax or postmark a
8 revised Request for Exclusion.

9 38. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
10 Member who does not affirmatively opt out of the Settlement Agreement by submitting a
11 timely and valid Request for Exclusion will be bound by all of its terms, including those
12 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
13 it grants final approval to the Settlement.

14 39. Increase in Workweeks. Defendants confirm that there are approximately
15 107,500 total workweeks in the Class Period. In the event the total number of workweeks
16 increase by more than 107,500 workweeks, the Net Settlement Amount shall be increased by
17 determining the workweek value calculated off of 107,500 workweeks and multiplied by the
18 additional number of workweeks.

19 40. Objection Procedures. To object to the Settlement Agreement, a Class Member
20 may not submit a Request for Exclusion and must mail a valid Notice of Objection to the
21 Claims Administrator before the Response Deadline. The Claims Administrator will notify
22 counsel for the Parties forthwith via email. Class Counsel will lodge the objection with the
23 Court. The Notice of Objection must be signed by the Class Member and contain all
24 information required by this Settlement Agreement. The postmark date of the mailing will be
25 deemed the exclusive means for determining that the Notice of Objection is timely. At no time
26 will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to
27
28

1 submit written objections to the Settlement Agreement or appeal from the Final Approval Order
2 and Judgment.

3 41. Certification Reports Regarding Individual Settlement Payment Calculations.

4 The Claims Administrator will provide Defendants' counsel and Class Counsel a
5 weekly report which certifies: (i) the number of Class Members who have submitted valid
6 Requests for Exclusion; and (ii) the number of any deficient Requests for Exclusion.
7 Additionally, the Claims Administrator will provide to counsel for both Parties any updated
8 reports regarding the administration of the Settlement Agreement as needed or requested.

9 42. Timing of Distribution of Individual Settlement Payments. Within two (2)
10 calendar days of Defendants depositing the funds as set forth above, the Claims Administrator
11 will issue payments to (1) Participating Class Members; (2) Plaintiff; (3) Class Counsel; and
12 payment to LWDA. The Claims Administrator will also issue a payment to itself for Court-
13 approved services performed in connection with the settlement.

14 43. Cy Pres. Individual settlement checks paid to class members will be valid for
15 180 days. After 180 days, proceeds from any uncashed checks and any and all interest
16 otherwise accrued on the funds remaining in the Qualified Settlement Fund account shall be
17 distributed pursuant to CCP Section 384 to a non-profit organization to support projects that
18 will benefit the class, further the objectives and purposes of the underlying class action or
19 promote the law consistent with the objectives and purposes of the underlying class action;
20 child advocacy programs; or non-profit organizations providing civil legal services to the
21 indigent. The Parties have agreed that the aforementioned proceeds shall be paid to the Legal
22 Aid at Work. The parties and their counsel have no affiliation or involvement with Legal Aid at
23 Work. Additionally, any tax forms issued to class members in connection with the proceeds
24 from any uncashed checks will be withdrawn and voided by the Claims Administrator, with all
25 applicable employer payroll taxes refunded to Defendants.
26
27
28

1 44. Certification of Completion. Upon completion of administration of the
2 Settlement, the Claims Administrator will provide a written declaration under oath to certify
3 such completion to the Court and counsel for all Parties.

4 45. Treatment of Individual Settlement Payments. All Individual Settlement
5 Payments will be allocated as follows: twenty percent (20%) of each Individual Settlement
6 Payment will be allocated for the settlement of wage claims subject to payroll withholdings and
7 deductions and the remaining eighty percent (80%) will be allocated to the settlement of claims
8 for interest and statutory penalties and will not be subject to payroll withholdings and
9 deductions. The portion allocated to wages in each Individual Settlement Payment will be
10 reported on an IRS Form W-2 and the portion allocated to interest and penalties will be reported
11 on an IRS Form-1099 by the Claims Administrator.

12 46. Administration of Taxes by the Claims Administrator. The Claims
13 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and
14 Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts
15 paid pursuant to this Settlement Agreement. The Claims Administrator will also be responsible
16 for forwarding all payroll taxes and other legally required withholdings to the appropriate
17 government authorities.

18 47. Declaration from Defendants' Officers or Directors: Defendants shall each
19 separately provide a declaration from an officer or director attesting to the claims of financial
20 hardship for their respective companies which shall be filed with the Court in support of the
21 Motion for Preliminary Approval.

22 48. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
23 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
24 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
25 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
26 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
27 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
28

1 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
2 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX
3 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
4 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
5 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT
6 LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
7 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
8 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR
9 ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED
10 TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
11 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
12 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER
13 TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
14 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
15 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
16 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
17 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
18 CONTEMPLATED BY THIS AGREEMENT.

19 49. No Prior Assignments. The Parties and their counsel represent, covenant, and
20 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
21 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
22 demand, action, cause of action or right released and discharged in this Settlement Agreement.

23 50. Release of Claims by Class Members. Upon the date the Court enters an order
24 granting final approval of the Settlement, all Class Members who do not timely submit a valid
25 Request for Exclusion do and will be deemed to have fully, finally and forever released, settled,
26 compromised, relinquished and discharged any and all of the Released Parties of and from any
27 and all Released Claims accruing during the Class Period.
28

1 51. Release by Plaintiff. Upon the date the Court enters an order granting final
2 approval of the settlement, in addition to the claims being released by all Class Members,
3 Plaintiff will provide the following additional general release ("General Release"): Plaintiff, on
4 his own behalf and on behalf of his heirs, spouses, executors, administrators, attorneys, agents
5 and assigns, fully and finally releases the Released Parties from all claims, demands, rights,
6 liabilities and causes of action of every nature and description whatsoever, known or unknown,
7 asserted or that might have been asserted, whether in tort, contract, or for violation of any state
8 or federal statute, constitution, rule or regulation arising out of, relating to, or in connection
9 with any act or omission by or on the part of any of the Released Parties committed or omitted
10 prior to the execution of this Agreement. This General Release applies to, but is not limited to,
11 the following: All claims arising from any alleged violation by Defendants of any federal,
12 state, or local statutes, or ordinances, including, but not limited to: (a) the Fair Labor Standards
13 Act; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Age Discrimination in
14 Employment Act; (d) the Older Workers Benefit Protection Act; (e) the Family and Medical
15 Leave Act; (f) the Equal Pay Act; (g) the Americans with Disabilities Act; (h) 42 U.S.C. §
16 1981, as amended; (i) the Employee Retirement Income Security Act; (j) the Consolidated
17 Omnibus Budget Reconciliation Act; (k) the Rehabilitation Act of 1973; (l) the Civil Rights Act
18 of 1991; (m) the Pregnancy Discrimination Act; (n) the Civil Rights Act of 1966; (o) California
19 Fair Employment and Housing Act; (p) California Constitution; (q) California Labor Code; (r)
20 California Government Code; (s) California Civil Code; and (t) any other employment and
21 employment discrimination laws. This release is for any and all relief, no matter how
22 denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
23 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for
24 pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges
25 and agrees to hold harmless Defendants and the Released Parties from any and all claims for
26 attorney fees and costs arising out of the matters released in this Settlement Agreement. This
27 General Release includes any unknown claims Plaintiff does not know or suspect to exist in his
28

1 favor at the time of this General Release, which, if known by him, might have affected his
2 settlement with, and release of, the Released Parties or might have affected his decision not to
3 object to this Settlement or this Release. To the extent the foregoing release is a release to
4 which Section 1542 of the California Civil Code or similar provisions of other applicable law
5 may apply, Plaintiff expressly waives any and all rights and benefits conferred upon him by the
6 provisions of Section 1542 of the California Civil Code or similar provisions of applicable law
7 which are as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
9 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
10 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
11 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
12 OR HER SETTLEMENT WITH THE DEBTOR.

13 The significance of this release and waiver of Civil Code Section 1542 has been explained to
14 Plaintiff by his counsel.

15 52. Release by Defendants. As consideration for the releases given and promises
16 made by Plaintiff, Defendants release, discharge, satisfy and cancel all claims, actions, causes
17 of action and liabilities of any kind against Plaintiff, his heirs, spouses, executors,
18 administrators, attorneys, agents and assigns, of which Defendants are aware as of the date
19 Defendants executes this Settlement Agreement and arising out of or related to Plaintiff's
20 employment by Defendants.

21 53. Nullification of Settlement Agreement. In the event that: (i) the Court does not
22 finally approve the Settlement as provided in this Settlement Agreement; or (ii) the Settlement
23 does not become final for any other reason, then this Settlement Agreement and any documents
24 generated to bring it into effect will be null and void. Any order or judgment entered by the
25 Court in furtherance of this Settlement Agreement will likewise be treated as void from the
26 beginning. In such case, the Settlement shall not be used or be admissible in any subsequent
27 proceedings, either in this Action, this Court, or any other Court or forum.
28

1 54. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
2 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
3 Approval Order for: (i) conditional certification of the Settlement Class for settlement purposes
4 only, (ii) preliminary approval of the proposed Settlement Agreement, and (iii) setting a date
5 for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will
6 provide for the Notice Packet to be sent to all Class Members as specified in this Settlement
7 Agreement. In conjunction with the Preliminary Approval motion, Plaintiff will submit this
8 Settlement Agreement, which sets forth the terms of this Settlement and will include the
9 proposed Notice Packet.

10 55. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
11 the deadlines to fax or postmark Request for Exclusion or submit objections to the Settlement
12 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will
13 be conducted to determine the Final Approval of the Settlement Agreement along with the
14 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Counsel Fees
15 and Costs; (iii) the Class Representative Enhancement Payment; (iv) payment to LWDA for
16 PAGA penalties; and (v) all Claims Administration Expenses. Class Counsel will be
17 responsible for drafting all documents necessary to obtain final approval. Class Counsel will
18 also be responsible for drafting the attorneys' fees and costs application to be heard at the Final
19 Approval/Settlement Fairness Hearing.

20 56. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
21 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present a
22 proposed Judgment to the Court for its approval. After entry of the Judgment, the Court will
23 have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
24 enforcement of the terms of the Settlement Agreement, (ii) settlement administration matters,
25 and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in
26 this Settlement Agreement.
27
28

1 57. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
2 include the terms set forth in any attached Exhibits, which are incorporated by this reference as
3 though fully set forth in this Settlement Agreement. Any Exhibits to this Agreement are an
4 integral part of the Settlement.

5 58. Entire Agreement. This Settlement Agreement and any attached Exhibits
6 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
7 written or oral agreements may be deemed binding on the Parties. The Parties expressly
8 recognize California Civil Code Section 1625 and California Code of Civil Procedure Section
9 1856(a), which provide that a written agreement is to be construed according to its terms and
10 may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such
11 extrinsic oral or written representations or terms will modify, vary or contradict the terms of
12 this Agreement.

13 59. Amendment or Modification. This Settlement Agreement may be amended or
14 modified only by a written instrument signed by counsel for all Parties or their successors-in-
15 interest.

16 60. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
17 warrant and represent they are expressly authorized by the Parties whom they represent to
18 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
19 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
20 execute any other documents required to effectuate the terms of this Settlement Agreement.
21 The Parties and their counsel will cooperate with each other and use their best efforts to effect
22 the implementation of the Settlement. If the Parties are unable to reach agreement on the form
23 or content of any document needed to implement the Settlement Agreement, or on any
24 supplemental provisions that may become necessary to effectuate the terms of this Settlement
25 Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.
26
27
28

1 61. Binding on Successors and Assigns. This Settlement Agreement will be binding
2 upon, and inure to the benefit of, the successors or assigns of the Parties to this Settlement
3 Agreement, as previously defined.

4 62. Execution and Counterparts. This Settlement Agreement is subject only to the
5 execution of all Parties. However, the Settlement Agreement may be executed in one or more
6 counterparts. All executed counterparts and each of them, including facsimile and scanned
7 copies of the signature page, will be deemed to be one and the same instrument provided that
8 counsel for the Parties will exchange among themselves original signed counterparts.

9 63. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
10 believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action
11 and have arrived at this Settlement Agreement after arm's-length negotiations with the
12 assistance of an experienced mediator and in the context of adversarial litigation, taking into
13 account all relevant factors, present and potential. The Parties further acknowledge that they
14 are each represented by competent counsel and that they have had an opportunity to consult
15 with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

16 64. Invalidity of Any Provision. Before declaring any provision of this Settlement
17 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
18 extent possible consistent with applicable precedents so as to define all provisions of this
19 Settlement Agreement valid and enforceable.

20 65. Waiver of Certain Appeals. The Parties agree to waive appeals; except,
21 however, that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel Fees
22 and Costs below the amount requested from the Court, and either party may appeal any court
23 order that materially alters the Settlement Agreement's terms. Plaintiff and Class Counsel
24 agree that they will not oppose Final Approval in the event of appeal of reduction in the Class
25 Counsel Fees and Costs below the amount requested from the Court.
26
27
28

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

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

8 68. Enforcement Actions. In the event that one or more of the Parties institutes any
9 legal action or other proceeding against any other Party to enforce the provisions of this
10 Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement,
11 the successful Party will be entitled to recover from the unsuccessful Party reasonable
12 attorneys' fees and costs, including expert witness fees incurred in connection with any
13 enforcement actions.

14 69. Mutual Preparation. The Parties have had a full opportunity to negotiate the
15 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement
16 will not be construed more strictly against one party than another merely by virtue of the fact
17 that it may have been prepared by counsel for one of the Parties, it being recognized that,
18 because of the arms-length negotiations between the Parties, all Parties have contributed to the
19 preparation of this Agreement.

20 70. Representation By Counsel. The Parties acknowledge that they have been
21 represented by counsel throughout all negotiations that preceded the execution of this
22 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
23 and advice of counsel.

24 71. All Terms Subject to Final Court Approval. All amounts and procedures
25 described in this Settlement Agreement will be subject to final Court approval.
26
27
28

1 72. Cooperation and Execution of Necessary Documents. All Parties will cooperate
2 in good faith and execute all documents to the extent reasonably necessary to effectuate the
3 terms of this Settlement Agreement.

4 73. Binding Agreement. The Parties warrant that they understand and have full
5 authority to enter into this Agreement, and further intend that this Agreement will be fully
6 enforceable and binding on all Parties, and agree that it will be admissible and subject to
7 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
8 provisions that otherwise might apply under federal or state law.

9 74. No Admission of Liability. Nothing contained in this Settlement Agreement shall
10 be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
11 part of Defendants. Each of the Parties has entered into this Settlement Agreement with the
12 intention to avoid further disputes and litigation, and the attendant inconvenience and expense.
13 This Settlement Agreement shall be inadmissible in evidence in any action or proceeding,
14 except an action or proceeding to approve, interpret, or enforce its terms.

15 75. Communications. The Parties and their counsel agree that they will not issue any
16 press releases, or initiate any contact with the media about this case and/or the fact, amount, or
17 terms of the Settlement. If counsel for either Party receives an inquiry about the Settlement
18 from the media, counsel may only respond that a settlement has been reached. Before the date
19 on which the Parties file their motion for preliminary approval of the Settlement, Plaintiff and
20 his Class Counsel will not initiate any contact with Class Members about the Settlement, except
21 that, if contacted by a Class Member, they may respond that a settlement has been reached and
22 that the details will be communicated in a forthcoming Court-approved notice.

23 76. Disputes. Any dispute between the Parties concerning the interpretation or
24 implementation of this Settlement Agreement will be resolved by the Court. Prior to any such
25 resort to the Court, counsel for the Parties will confer in good faith to resolve the dispute and, if
26 the dispute cannot be resolved, submit the disputed issue to mediator Lynn Frank before
27 seeking the Court's assistance.
28

77. Applicable Law. All terms and conditions of this Stipulation and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Julius Ray Winters

DEFENDANT

Dated: _____

Dependable Highway Express, Inc.

By:

Its:

DEFENDANT

Dated: 12/21/18

Javier Chavolla, CFO
Citistaff Solutions, Inc.

By:

Its:

APPROVED AS TO FORM

Dated: _____, 2018

THE NOURMAND LAW FIRM, APC

By:

Michael Nourmand
James A. De Sario

Attorneys for Plaintiff
Julius Ray Winters, on behalf of himself and
all others similarly situated

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

Dated: December 26, 2018

SCOPELITIS, GARVIN, LIGHT HANSON &
FEARY, LLP

By: 
Megan E. Ross, Esq.

Attorneys for Defendant
Dependable Highway Express, Inc.

Dated: _____, 2018

CITISTAFF SOLUTIONS, INC.,
General Counsel

By: _____
Charles C. Slater, Esq.
Attorneys for Defendant
Citistaff Solutions, Inc.

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

Dated: _____, 2018

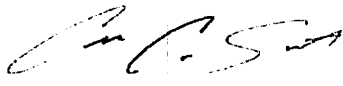
SCOPELITIS, GARVIN, LIGHT HANSON &
FEARY, LLP

By: _____
Megan E. Ross, Esq.

Attorneys for Defendant
Dependable Highway Express, Inc.

Dated: 12/21, 2018

CITISTAFF SOLUTIONS, INC.,
General Counsel

By:  _____

Charles C. Slater, Esq.
Attorneys for Defendant
Citistaff Solutions, Inc.