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Attorneys for Plaintiff DAVID R. SIERRA
individually and on behalf of all others similarly situated.

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

DAVID R. SIERRA, individually and on behalf of all others similarly situated, Plaintiff, v. NATIONAL RETAIL TRANSPORTATION, INC., a Pennsylvania Corporation and DOES 1 - 50, inclusive, Defendant. AND RELATED ACTION.	Case No.: CIVSB2222831 Related Case No.: CIVSB2227785 Judge: Hon. Joseph T. Ortiz Department: S17 **DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** Date: May 12, 2025 Time: 1:30 p.m. Dept.: S17

DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

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

2. Attached hereto as **Exhibit A** is a true and correct copy of the Order Granting Preliminary Approval of the Settlement. Attached as **Exhibit B** is a true and correct copy of the executed Settlement Agreement which the Parties ask the Court to approve. The Settlement Administration is now complete. Of the 1,096 participating class members, two Class Members requested exclusion and none objected to the settlement. As such, Plaintiff now requests the Court grant final approval of the settlement.

PROCEDURAL BACKGROUND

3. On October 7, 2022, Plaintiff Sierra submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA").

4. On October 7, 2022, Plaintiff Sierra filed the Class Action against Defendant in a case entitled *David R. Sierra v. National Retail Transportation, Inc.*, San Bernardino Superior Court Case No. CIVSB2222831 (the "Sierra Class Action").

5. On December 13, 2022, Plaintiff Sierra filed his PAGA Action against Defendant in a case entitled *David R. Sierra v. National Retail Transportation, Inc.*, San Bernardino Superior Court Case No CIVSB2227785 (the "Sierra PAGA Action").

6. The Class Action and PAGA Action both allege that Defendant violated various wage and-hour laws, including: (1) failure to pay wages including overtime and minimum wages as

required by Labor Code §§ 510 and 1194; (2) failure to pay timely wages required by Labor Code§ 203; (3) failure to provide accurate wage statements required by Labor Code §§ 226, 226.3, 558.l; (4) failure to reimburse necessary business expenses; (5) unlawful deductions of wages pursuant to Labor Code § 221; and (6) violation of Business & Professions Code § 17200, et seq.

MEDIATION

7. In preparation for the mediation, Defendant provided Class Counsel with first- and last-time punch dates for all employees, a random sample of time and payroll records for 30% of the Class Members and relevant policies and relevant collective bargaining agreements for Class Members during the Class Period.

8. On January 31, 2024, the Parties participated in mediation with Jeffrey Fuchsman, Esq., a respected mediator of complex wage-and-hour actions, and with the assistance of his evaluations, the Parties reached settlement.

9. Defendant denies that Defendant engaged in any misconduct in connection with the wage-and-hour practices associated with the Class Members (inclusive of the Aggrieved Employees). Defendant further denies that Defendant has any liability of any kind associated with the claims alleged in the Actions. Defendant contends that Defendant has complied with both federal and state wage-and-hour laws, and all other laws regulating its relationship with the Class Members and the Aggrieved Employees, including the Named Plaintiffs.

10. Class Counsel has investigated the facts relating to the Actions. Settlement discussions were conducted at arm's length during a full-day mediation with a neutral third-party mediator Jeffrey Fuchsman, Esq., and numerous subsequent settlement discussions, which ultimately led to a mediator proposal that was accepted by the Parties on or about April 5, 2024 and of which is placed before this Court for approval.

11. Settlement is the result of an informed and detailed analysis of Defendant's potential liability and exposure in relation to the costs and risks associated with continued litigation. Through both formal and informal efforts, Plaintiff obtained a 30% sample of time and pay records, numerous policy documents relating to the claims and the operative CBA applicable to the Class during the Class Period. Based on the documents and data produced, as well as Class Counsel's own

independent investigation and evaluation, Class Counsel believes that the Settlement documented by this Settlement Agreement is fair, reasonable, and adequate, and in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay and defenses asserted to the merits of the Actions. While Defendant specifically denies any liability in the Actions, Defendant has agreed to enter into this Settlement to avoid the costs associated with defending the Actions.

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

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

14. As a result of the mediation, the Parties agreed to settle this matter for a Gross Settlement Amount ("GSA") of $1,050,000.00. Plaintiffs' counsel balanced the terms of the proposed Settlement against the risk of litigation and probable outcome at the class certification stage, and if any Class were certified, at trial. Based on their own respective independent investigations and evaluations, and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution of the case, and the monetary benefits received under the Settlement despite the questionable nature of the claims, Plaintiffs' counsel is of the opinion that Settlement for the consideration and on the terms set forth in the

Settlement Agreement is fair, reasonable and adequate and is in the best interests of Plaintiff and the Class. Counsel for the Parties investigated the applicable law as applied to the facts discovered regarding the claims of Plaintiff, Defendant's defenses thereto and the damages claimed by Plaintiffs on behalf of the Settlement Class.

<u>THE CLAIMS</u>

15. The GSA includes, subject to Court approval, (1) attorneys' fees in the amount of $367,500.00 and reimbursement of reasonable litigation costs and expenses in the amount of up to $25,000.00 to Class Counsel ("Attorneys' Fees and Costs"); (2) Named Plaintiffs Class Representative Service Awards in the amount of $10,000.00 to each Named Plaintiff ("Enhancement Award for Named Plaintiffs"); (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount of $12,500.00 ("Settlement Administration Costs"); (4) $75,000.00 to PAGA with twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Amount that will be distributed to Class Members in the PAGA Group in the amount of $10,000.00; and (5) the seventy-five percent (75%) share of PAGA Penalties ("LWDA Payment") in the amount of $56,250.00 to the California Labor and Workforce Development Agency ("LWDA"). **The Entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.** After deductions, the Net Settlement Amount ("NSA") is estimated to be approximately **$550,000.00.** The Class Members are to be paid based from the NSA on a pro rata basis based upon the weeks each class member worked in comparison to the total work weeks worked by all Class Members.

16. The Settlement was negotiated and based upon the representation that there were no more than 108,033 non-exempt workweeks worked by the Class Members during the period Class Period through December 31, 2023. If that number is incorrect by more than 10% (i.e., by more than 10,803 workweeks) as of December 31, 2023, Defendant shall increase the Gross Settlement Amount proportionally. For example, if the number is 12% higher, the Gross Settlement Amount will be increased by 2%. It is estimated there are approximately 47,439 Pay Periods worked by

approximately 738 PAGA Members during the PAGA Period of October 7, 2021, through April 30, 2024.

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

18. A thirty percent (30%) sampling of Class Member's time and pay records were produced and analyzed along with other relevant data points, to come up with a damage model to determine Defendant's exposure for the class.

19. Although Plaintiffs' Counsel believes the class claims are strong, Plaintiffs' Counsel also recognize that if the litigation had continued, they may well have encountered significant legal and factual hurdles that could have prevented the Class from obtaining any recovery.

20. To be sure, a number of cases have found wage and hours actions to be especially amenable to class resolution. However, some courts have gone the other way, finding that some of the very claims at issue here-especially meal period and rest period violations-were not suitable for class adjudication because they raised too many individualized issues. *See Duran v. US. Bank National Association*, 59 Cal. 4th 1 , 31 (2014) (reversing a verdict from a class trial); *Ali v. US.A. Cab Ltd.*, 1 76 Cal. App. 4th 1333, 1341 (2009) (affirming denial of certification because employees' declarations attesting to having taken meal and rest periods demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.* , 2013 U.S. Dist. LEXIS 137792, at *30- 41 (C.D. Cal. Sept. 20, 2013) (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); .*Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist. LEXIS 65328 (C.D. Cal. Apr. 18, 2012) (denying motion to certify

meal and rest period classes based on employer's practice of understaffing and overworking employees); *Gonzalez v. Officemax NA*., 2012 U.S. Dist. LEXIS 163853 (C.D. Cal. Nov. 5, 2012) (same); *Brown v. Fed. Express Corp*., 249 F.R.D.580, 587-88 (C.D. Cal. 2008) (denying certification of driver meal and rest period claims based on the predominance of individual issues); *Kenny v. Supercuts, Inc.*, 252 F.R.D. 64 I, 645 (N.D. Cal. 2008) (denying certification on meal periods claim); *Blackwell v. Skywest Airlines, Inc.* , 245 F.R.D. 453, 467- 68 (S.D. Cal. 2007) (declining to certify class action because individual issues predominated when different employee stations provided different practices with respect to meal periods).

21. Some courts have denied certification even when an employer's policies are unlawful on their face. For instance, in *Ordonez v. Radio Shack, Inc.*, 20 1 3 U.S. Dist. LEXIS 7868, *35-4 1 (C.D. Cal. Jan. 17, 201 3), the court denied certification even though the plaintiff submitted evidence of a facially unlawful policy regarding rest breaks. The *Ordonez* court concluded that the predominance and superiority elements were not met based on the employer's presentation of anecdotal evidence of lawful compliance notwithstanding the unlawful policy. Id. at *38-40. And it should be underscored that that claims which are amendable to certification can be disposed of by motion for summary judgment. *See Loudv. Eden Med. Ctr*., 2013 U.S. Dist. LEXIS 122873, **36-53 (N.D. Cal. Aug. 28, 2013) (granting summary judgment on wage statement claim because plaintiff could not show injury due to defects and that incorrect wage information is not willful).

22. As the above examples illustrate, the prospect of certifying a wage and hour action is always uncertain, and the risk of being denied class certification militates in favor of settlement. A denial of class certification effectively forecloses continued litigation, as neither the individual nor his or her attorney will have any incentive to proceed with an individual case when such small claims are at stake. *See In re Baycol Cases I & II*, 5 1 Cal. 4th 75 1 , 758 (2011) (explaining that a dismissal of class claims is effectively the "death knell" of the case, despite survival of individual claims). In other words, for cases where individual damages are relatively small, denial of class certification results in a near-complete loss for Plaintiffs as well as no recovery for the employees, who are shut out of the action. Thus, if the putative Class had not been certified, the value of Plaintiffs' case would have been reduced to a fraction of the value of this Settlement; indeed,

Defendant would likely have offered no money to settle the class-wide claims if certification had been denied.

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

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

25. The GSA is well within the acceptable range of reasonableness for the claims of the Settlement Class Members and the Court has preliminarily approved the GSA and agreed. Based upon detailed data obtained through both formal and informal discovery and information exchanges, there are approximately 1,094 participating class members who worked approximately 114,889 workweeks during the Class Period.

26. As a result, the GSA of $1,050,000.00 represents a reasonable recovery and accounts for approximately 20% of the alleged unadjusted ricks exposure of $4,495,549.00 for the damages claims only, and about 17% of the overall potential value including penalties with the risk adjusted

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

27. Based on the estimated Net Settlement Amount of $558,140.56, on average each Settlement Class Member with approximately **$510.18** per Class Member. The highest amount a Settlement Class Member will receive is approximately **$1,243.67**. The lowest payment is estimated to be approximately **$4.86** for someone who worked only one workweek. These amounts are subject to employee-side tax and withholdings. To the extent any amount for Attorneys' Fees, Costs, Claims Administration Costs or Incentives are not awarded, the difference in those amounts will be added to the NSA. This is a guaranteed amount of money paid to Settlement Class Members now, rather than the continued risk of further litigation and receiving no money sometime in the far future and after trial and appeals.

28. The PAGA members who worked during the PAGA period will be paid a PAGA Payment based upon a pro rata share of the number of pay periods each PAGA member worked compared to the total pay periods worked by all PAGA group members during the PAGA period of approximately 58,223 weeks during the PAGA period. As a result, there are approximately 732 PAGA members or Aggrieved Employees who will each receive on average approximately $25.61 per PAGA member. The highest individual PAGA Penalties payment to an Aggrieved Employee is approximately $42.83. The lowest value is approximately $0.32 for one pay period worked.

29. The Class Representatives have provided extensive supporting documents and assisted Class Counsel in developing information necessary to litigate and settle this case. Plaintiffs also conducted record review and consultation with counsel in preparation for mediation, and to

assist in evaluating and proving the claims. The settlement provides for a Payment to be paid to the Class Representatives in the amount of $10,000.00 each, subject to Court approval. The purpose is to compensate the Class Representatives an additional incentive payment, taking into consideration the risks, time, effort and expenses incurred in coming forward to provide invaluable information and negotiate and litigate this matter on behalf of all Settlement Class Members who otherwise, would probably not file their own individual claims to recover what may be relatively low damages. Further, the Payment of $10,000.00 as an Enhancement Award to each of the Class Representatives is a very fair and justified as part of the Settlement based on the risks Plaintiffs have taken and benefits conferred upon the Settlement Class.

30. I believe that the consideration and terms set forth in the Settlement Agreement is fair, reasonable, and adequate and are in the best interests of the Settlement Class in light of all known facts and circumstances, including the various defenses asserted by Defendant, and numerous potential appellate issues. In addition, the prospect of a potential adverse summary judgment ruling, as well as the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered in agreeing to the proposed Settlement.

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

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

CLASS COUNSEL EXPERIENCE

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

- ***Mojica v. Compass Group, Inc., et. al.*** USDC Central District, Case No. 8:13-cv-01754.
- ***Dao v. 3M Company, et al.*** USDC, CENTRAL DISTRICT, Case No. CV-08-04554.
- ***Ortiz v. Kmart,*** USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
- ***Morgan v. Aramark Campus, LLC,*** USDC, CENTRAL DISTRICT, Case No. SACV08-00412.
- ***West v Iron Mountain Information Management, Inc, et. al.;*** Los Angeles County Superior Court, Case No. BC393709.
- ***Gonzalez v. Superior Industries International, Inc.,* et al.,** Los Angeles County Superior Court, Case No. BC 357912.
- ***Acosta v. Fleetwood Travel Trailers of California, Inc.,* et al.,** Riverside County Superior Court, Case No. RIC 440630.
- ***Walker v. Sharkeez,* et al.,** Orange County Superior Court, Case No. 05CC00293.
- ***Padron v. Universal Protection Service, et al,*** Orange County Superior Court, Case No. 05CC00013.
- ***Martinez v. Securitas Security Services USA, et al.,*** Santa Clara Superior Court, Case No. 105-CV047499, et al. J.C.C.P. No. 4460.
- ***Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.,*** Riverside Superior Court, Case No. RIC 420909.
- ***Ruiz, et al. v. Unisourse Worldwide, Inc., et al.,*** USDC, CENTRAL DISTRICT, Case No. CV09-05848.

- ***Herrador v. Culligan International Company, et al.,*** USDC, CENTRAL DISTRICT, Case No. SACV 08-680.
- ***Defries v. Domain Restaurants, et al.,*** Orange County Superior Court, Case No. 05CC00128.
- ***Denton v. BLB Enterprises, Inc., et al.,*** Orange County Superior Court, Case No. 07CC01292.
- ***Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.,*** Los Angeles Superior Court, Case No. BC411477.
- ***McMurray v. Dave and Busters, Inc., et al.,*** Orange County Superior Court, Case No. 06CC00099.
- ***Osuna v. DFG Restaurants, Inc., et al.,*** Los Angeles Superior Court, Case No. BC 330145.
- ***Burns v. Gymboree Operations, Inc.,*** **et al.,** San Francisco Superior Court, Case No. CGC-07-461612.
- ***Willems v. Diedrich Coffee, Inc., et al.,*** Orange County Superior Court, Case No. 07CC00015.
- ***Davila, et al. v. Beckman Coulter, Inc., et al.,*** Orange County Superior Court, Case No. 07CC01347.
- ***Perez v. Naked Juice Company of Glendora, Inc.,*** Los Angeles Superior Court, Case No. BC387088.
- ***Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour Cases***, Los Angeles Superior Court, Case No. JCCP 4545.
- ***Placencia v. Amcor Packaging Distribution, Inc.,*** Orange County Superior Court, Case No. 30-2013-00694012-CU-OE-CXC.
- ***Trani v. Lisi Aerospace, et al.,*** Los Angeles Superior Court, Case No. BC495527.
- ***Galvan v. Goodwin Co.,*** Orange County Superior Court, Case No. 30-2013-00637062-CU-OE-CXC.

- ***Reyes v. Bristol Fiberlite,*** Orange County Superior Court, Case No. 30-2013-00653425-CU-OE-CXC.
- ***Gutierrez v. HMT Tank,* USDC Central Dist.,** Case No. CV14-1967-CAS(MAN)
- ***Williams v. Il Fornaio America Corp.,*** Sacramento County, Case No. 34-2011-0009616.
- ***Aguilar v. 7-Eleven, Inc.,*** Orange County, Case No. 30-2009-002687141-CU-OE-CXC.
- ***Madrigal v. Huntington Beach Market Broiler, Inc.,*** Orange County, Case No. 30-2012-00611260.
- ***Vang v. Jazz Semiconductor, Inc.,*** Orange County, Case no. 30-2011-00460278.
- ***Vigueras v. Red Robin International, Inc,*** USDC Central Dist. Case No. *SACV 17-1422 JVS (DFMx);*
- ***Smith v. Space Exploration Technologies Corp.,*** Los Angeles Superior Court, Case No. *BC55429;*
- ***Cano v. Financial Statement Services, Inc.,*** Orange County Superior Court, Case No. 30-2013-00653349-CU-OE-CXC;
- ***Mendez v. Liberty Glass Fabricators, Inc.,*** Riverside County Superior Court Case No. RIC1800119;
- ***Attia v. Neiman Marcus Group, Inc.,*** United States District Court for the Central District of California Case No. 8:16-cv-001504-DOC-FFM;
- ***O'Brien, et al. v. Cerida Investment Corp.,*** Santa Clara Superior Court Case No. 21CV384527;
- ***Gonzalez v. Quality Aluminum Forge, LLC,*** Orange County Superior Court Case No. 30-2015-00817941;
- ***Shay v. Apple, Inc.,*** United States District Court for the Southern District of California Case No. 3:20-cv-1629-JO-BLM;
- ***Milligan v. CWI, Inc.,*** San Bernardino Superior Court Case No. CIVDS 2013999;
- ***Aguilar v. LDI Mechanical, Inc.,*** Riverside County Case No. RIC1610019;

- ***Abron v. University Healthcare Alliance,*** Alameda County Superior Court Case No. RG20066438;
- ***Benson v. F21 Opco, LLC,*** San Diego Superior Court Case No. 37-2021,00024619-CU-OE-CTL;
- ***Allen v. Creative Stone Mfg., Inc.,*** San Bernardino County Superior Court Case No. CIVSB2201498;
- ***Santamaria v. Bright Horizons Children's Center,*** San Bernardino County Superior Court Case No. CIVSB2210140;
- ***Yniguez v. Airgas USA, LLC,*** Los Angeles County Superior Court Case No. 20STCV18190;
- ***Cervantez v. Genuine Parts Company,*** Los Angeles County Superior Court Case No. 22STCV00981;
- ***Robles v. Jetro Holdings, LLC,*** San Diego Superior Court Case No. 37-2021-00015414-CU-OE-CTL;
- ***Hernandez v. Euromarket Designs, Inc.,*** Santa Clara County Superior Court Case No. 20CV3770922;
- ***Ayala v. Veg-Land, et al.,*** Orange County Superior Court Case No. 30-2014-00738775-CU-OE-CXC;
- ***Puente v. Sully-Miller Contracting Co.,*** Orange County Superior Court Case No. 30-2015-00792088-CU-OE-CXC;
- ***Garcia v. Revolution Foods, Inc.,*** Los Angeles Superior Court Case No. BC579142;
- ***Attaway, et al. v. Alliance Residential, LLC,*** Santa Clara County Superior Court Case No. 20CV365134;
- ***Bowman v. Delta Dental of California,*** Alameda County Superior Court Case No. RG21108230;
- ***Hernandez v. Burrtec Waste & Recycling Services, LLC,*** United States District Court for the Central District of California Case No. 5:21-CV-001490-JWH-SP;

- ***Grant v. T-Mobile USA, Inc.,*** United States District Court for the Central District of California Case No. 2:21-CV-02268;
- ***Dawson v. Wonderful Pistachios and Almonds, LLC,*** Kern County Superior Court Case No. BCV-17-100848;
- ***Hamilton, et al. v. Michael Kors Stores (California), Inc.,*** Los Angeles County Superior Court Case NO. 19STCV37061;
- ***Ross v. Stater Bros.,*** San Bernardino Superior Court Case No. CIVDS1902518;
- ***Walker v. Barrett Business Services, Inc., et al.,*** Los Angeles County Superior Court Case No. 20STCV39172;
- ***Benitez, et al. v. Medtronic, Inc., et al.,*** Orange County Superior Court Case No. 30-2019-01069185-CU-OE-CXC;
- ***Montgomery v. Copart, Inc.,*** Sacramento County Superior Court Case No. 34-2020-00280733-CU-OE-GDS;
- ***Vizcarra-McNamee v. Nordstrom, Inc.,*** Orange County Superior Court Case No. 30-2020-01141916-CU-OE-CXC;
- ***Ayers v. Cherry Hill Programs, Inc.,*** Fresno County Superior Court Case No. 20CECG00821;
- ***Sleeper v. Boot Barn, Inc.,*** Sacramento County Superior Court Case No. 34-2019-00272000-CU-OE-GDS;
- ***Pulido-Dias v. Dirt Cheap, Inc.,*** San Bernardino County Superior Court Case No. CIVDS1719694;
- ***Villanueva v. Nordstrom, Inc.,*** San Bernardino County Superior Court Case No. CIVDS1918706;
- ***Bryson v. Madame Tussauds, et al.,*** Los Angeles County Superior Court Case No. 19STCV33514
- ***Hightower v. Levy Premium, et al.,*** Santa Clara County Superior Court Case No. 19CV359262;

- ***Marquez v. Maxim Crane Works, L.P.*, et al,** Los Angeles County Superior Court Case No. 19STCV39548;
- ***Rovira v. Silverado Senior Living Management, Inc.,*** Orange County Superior Court Case No. 30-2020-01136565-CU-OE-CXC;
- ***Hallum, et al. v. FCA US, LLC,*** San Bernardino County Case No. CIVDS1936782;
- ***Martinez v. Placer Title Co., et al.,*** Kern County Case No. BCV-19-103486;
- ***Torres v. Van Law Food Products, Inc.,*** Orange County Case No. 37-2017-00946312-CU-OE-CXC;
- ***Holmes v. Pet Food Express, LLC,*** Alameda County Case No. 22CV014140;
- ***Ventura v. Conduent Commercial Solutions, LLC,*** Kern County Case No. BCV-22-102043;
- ***Ramirez v. CSI Electrical Contractors, Inc.,*** Fresno County Superior Court Case No. 18CECG04150;
- ***Magana v. Eibach Springs, Inc.,*** Riverside County Superior Court Case No. RIC1708917;
- ***Knox v. Express Messenger Systems, Inc.,*** San Bernardino County Superior Court Case No. CIVDS1932323;
- ***Corona, et al. v. G&M Oil Company, Inc.,*** Los Angeles County Superior Court Case No. BC640876
- ***Aguilar v. Peach Home Services, Inc., et al.,*** Riverside County Superior Court Case No. RIC1823057;
- ***Wilson v. M.C. LLC,*** Orange County Superior Court Case No. 30-2019-01103382-CU-OE-CXC.
- ***Nunez v. Nevell Group, Inc.,*** Orange County Superior Court Case No. 30-2015-00783269.
- ***Bendorf, et al. v. Sea World LLC,*** *et al.,* San Diego Superior Court Case No. 37-2021-00034922-CU-OE-CTL;
- ***DeMartini, et al. v. Safelite Fulfillment, Inc.,*** Marin County Case No. CIV20002076;

- ***Ayala, et al., v. Macy's West Stores, Inc.,*** Los Angeles County Case No. 20STCV34182;
- ***Wallen, et al. v. United Rentals (North America), Inc., et al.,*** Stanislaus County Case No. CV-22-000399;
- ***Granados v. Hyatt Corporation,*** United States District Court for the Southern District of California Case No. 3:23-cv-01001-H-VET;
- ***Vigil v. Hyatt Corporation,*** United States District Court for the Northern District of California Case No. 4:22-cv-00693;
- ***Garcia v. U.S. Best Ingredients, Inc.,*** Los Angeles Superior Court Case No. 21TRCV00813.

<u>REASONABLENESS OF REQUESTED ATTORNEYS' FEES</u>

34. Here, the Parties' agreement to pay Class Counsel Fees of 35% of the GSA is reasonable. My firm and I have been the only counsel to represent Plaintiff Sierra and the Settlement Class in this matter, and we have borne the entire risk and cost of this litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my experience and the extensive review and analysis of documents and information by me and others at my firm and our co-counsel. In a complex action such as this, the proposed attorneys' fees are, at the very least, on the low side of the market rate for contingency fees.

35. In sum, my firm has been the lead or co-lead counsel in hundreds of wage and hour cases since its inception. These cases have confronted many of the same issues presented in the above-entitled action. We have been certified as class counsel on numerous occasions (both through settlement and via motion). We have successfully recovered hundreds of millions of dollars for employees in the State of California and millions for the State as well through PAGA.

36. Indeed, our firm has served as class counsel in a number of significant wage and hour settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest wage and hour class action settlement in California history at $130,000,000. During this case, plaintiffs appealed a decertification order. This case involved several appeals. The appellate record amassed an extensive appellate record comprising a 23-volume joint appendix, a three-volume reporters'

transcript, five briefs, four letter briefs, two motions for judicial notice, a motion to augment the record, and several additional letters informing the appellate court of new legal authority issued after Dukes. The matter was argued to and submitted by the Court of Appeal on September 15, 2016, and on November 21, 2016, the decertification order was reversed, and the case was remanded for further proceedings. (*Lubin v. The Wackenhut Corporation* ("Lubin"), 5 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the Court of Appeal decision to the California Supreme Court. The Supreme Court denied Wackenhut's petition for review of Lubin. The Court of Appeal issued remittitur on April 10, 2017. Eventually through additional litigation, the parties were able to secure the $130 million settlement that was approved on October 21, 2019, by Judge Highberger in the Los Angeles Superior Court.

37. Additionally, in early 2020, our firm served as lead counsel in a class action jury trial in the Central District of California involving the class and PAGA representative claims of over 23,000 employees which successfully resolved in the midst of trial for $8,500,000.

38. Our firm has settled many high-stakes class and representative actions. Hawkins' settlements have directly compensated hundreds of thousands of California workers and consumers. Hawkins' actions have also forced employers to modify their policies for the benefit of employees including changing the compensation structure for certain employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting class and PAGA enforcement actions, Hawkins has secured millions of dollars for workers and in civil penalties for the State of California.

39. Here, the Parties' agreement to pay Class Counsel Fees of 35% of the Gross Settlement Amount (i.e. $367,500.00) is reasonable. Plaintiffs' counsel have borne the entire risk and cost of this litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my firms and co-counsel's experience and the extensive review and analysis of documents and information by me and others at my firm and our co-counsels'. In a complex action such as this, the proposed attorneys' fees are, at the very least, on the low side of the market rate for contingency fees.

40. My firm as Class Counsel, on behalf of Plaintiffs and the Settlement Class Members,

invested approximately **306.70** documented hours litigating this matter through the date of this declaration for a total lodestar of **$249,326.00** in fees, broken down as follows: my rate of $1,050 per hour x 101.60 hours = $106,680.00; Gregory Mauro's rate of $850 per hour x 154.80 documented hours = $131,580.00; and paralegal Melissa Whitson's rate of $200 x 50.30 hours = $10,060.00. It is also anticipated and estimated that Greogry Mauro will expend an additional 25 undocumented hours litigating this matter. Gregory Mauro's rate of $850 per hour x 25 additional hours = $21,250.00 in additional undocumented fees. Accordingly, the total lodestar, including the anticipated undocumented hours is $**270,576.00**.

41. In addition to the requested attorneys' fees, our office has expended a total of **$13,578.68** in costs in prosecuting this action. The office of Blumenthal, Nordrehaug, Bhowmik De Blouw, LLP has expended a total of **$3,280.76**, as evidenced in Exhibit #2 to the Nordrehaug Declaration filed concurrently herewith. These costs have been necessary costs associated with prosecution of this important matter. Accordingly, the total actual costs expended on this matter to date equal **$16,859.44.** Counsel for Plaintiffs respectfully requests the Court grant the request to have these costs repaid from the Settlement. Attached as **Exhibit C** is a true and correct copy of my firm's Costs and Billing Detail.

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

potential appellate issues.

REASONABLENESS OF THE NAMED PLAINTIFFS' ENHANCEMENT AWARDS

43. The parties request payment of the Class Representatives Enhancement Awards from the non-reversionary Gross Settlement Amount to the Class Representatives in the amount of $10,000.00 each, in addition to the payment they are otherwise entitled to receive as Class Members. The proposed Enhancement Awards are reasonable compensation given the time and effort that the Plaintiffs devoted to this case; the valuable assistance they provided to Class Counsel; and the fact that they entered into a general release of claims that is broader than the release of the Class.

44. Plaintiffs provided invaluable assistance to Class Counsel and the Class in this case, including providing factual background for the Class Complaint; reviewing the relevant documents, and Complaint; preparing for and participating in full day mediation; participating in phone calls with their lawyers to discuss litigation and settlement strategy; and reviewing the settlement documents. Plaintiffs agreed to participate in this case with no guarantee of personal benefit. The Court already found the requested Enhancement Awards to be reasonable, as they were preliminarily approved per the Court's January 7, 2025 Order granting Preliminary Approval (Exhibit A).

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 18, 2025 at Irvine, California.

James R. Hawkins

EXHIBIT A

JAMES HAWKINS APLC
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Attorneys for Plaintiff DAVID R. SIERRA individually and on behalf of all others similarly situated.

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

DAVID R. SIERRA, individually and on behalf of all others similarly situated, Plaintiff, v. NATIONAL RETAIL TRANSPORTATION, INC., a Pennsylvania Corporation and DOES 1 - 50, inclusive, Defendant.	Case No.: CIVSB2222831 Related to Case No.: CIVSB2227785 Judge: Hon. Joseph T. Ortiz Department: S17 **~~[PROPOSED]~~ ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: December 6, 2024 Time: 1:30 p.m.

ORDER

This matter came on for hearing on December 6, 2024, at 1:30 p.m. in Department S17 of the above-captioned court on the Motion for Preliminary Approval of Class Action Settlement, upon the terms and conditions set forth in the Stipulation for Class Action Settlement (hereinafter "Settlement Agreement").

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

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

AND BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP BE CONDITIONALLY AND PRELIMINARILY APPOINTED CLASS COUNSEL. MORE SPECIFICALLY, THE COURT FINDS AS FOLLOWS:

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

The Court notes that Defendant has agreed to a non-reversionary GSA of $1,050,000.00. Defendant will pay out the entirety of the GSA to the Participating Class Members and PAGA Settlement Group Members, less deductions for attorneys' fees and costs, the Named Plaintiffs' Enhancement Awards, reasonable expenses of the third-party Settlement Administrator, and the LWDA for PAGA penalties.

The Court finds that the elements of numerosity, commonality, typicality and adequacy have been established to support conditional certification of the Settlement Class for settlement purposes, with Plaintiffs DAVID R. SIERRA and KEITH HALLER acting as the Class Representatives.

The Court hereby appoints, for settlement purposes, Plaintiffs DAVID R. SIERRA and KEITH HALLER as the Class Representatives and finds Plaintiffs are adequate representatives for the Settlement Class for settlement purposes. The Court further finds that James Hawkins APLC and Blumenthal Nordrehaug Bhowmik De Blouw have preliminarily established adequacy to be appointed as Class Counsel and appoints them as Class Counsel.

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

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

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

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

The Court finds that the Notice of Class Action Settlement constitutes the best notice practicable under the circumstances, is in full compliance with the laws of the State of California and, to the extent applicable, the United States Constitution and the requirements of due process. The Court further finds that the Notice of Class Action Settlement fully and accurately informs Settlement Class Members of all material elements of the proposed Settlement, of each Settlement Class Member's right to be excluded from the Settlement Class, and each Settlement Class Member's right and opportunity to object to the proposed Settlement. The Notice of Class Action Settlement adequately advises the Class about: the Class Action; the terms of the proposed Settlement and the benefits available to each Settlement Class Member; each Settlement Class Member's right to participate, submit an exclusion/Opt-Out, or Objection to the proposed Settlement, and the timing and procedures for doing so; the temporary and conditional certification of the Settlement Class for settlement purposes only; preliminary Court approval of the proposed Settlement; timing and procedures for distributing the Gross Settlement and the Individual Settlement Payments to the Participating Class Members; and the date of the Final Approval Hearing as well as the rights of the Settlement Class to file documentation in support of or in opposition to and appear in connection with said hearing.

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

Within 15 business days after entry of the Preliminary Approval Order, Defendant will provide to the Settlement Administrator a list of Class Members that identifies each Class Member by name, Social Security Number, and last-known address; and specifies the number of weeks worked by each Class Member in a non-exempt position in California during the Class Period and the PAGA Period (the "Class List"). Defendant will provide the Class List in an Excel file or other format reasonably acceptable to the Settlement Administrator. The Class Data provided to the Settlement Administrator will remain confidential, shall be used solely to administer the

Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. The Settlement Administrator will be required to sign and provide to Defendant a Certification Regarding Confidential Discovery Materials and to be bound by a Stipulated Protective Order as entered by the Court. The Settlement Administrator shall use due care with respect to the storage, custody, use, and/or dissemination of the confidential information. Such information must be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

IT IS FURTHER ORDERED Upon receipt of the Class List, the Settlement Administrator shall perform a search based upon the National Change of Address Database to update and correct any known or identifiable address changes. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. Within 14 business days after receipt of the Class List from Defendant, the Settlement Administrator will send the Class Notice to each Class Member via First Class U.S. Mail. Receipt of the Class Notice shall be presumed as to every Class Member whose Class Notice is not returned to the Settlement Administrator as undeliverable within 14 business days after mailing.

IT IS FURTHER ORDERED The Settlement Administrator will re-mail any notice packet returned by the United States Postal Service with a forwarding address on or before the expiration of the Notice Period. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within 14 business days after remailing, have received the Class Notice. Class Members who receive a re-mailed Class Notice shall have 45 days from the date of the re-mailing to object, opt out, or dispute the workweeks attributed to them.

IT IS FURTHER ORDERED The Settlement Administrator will use the appropriate skip tracing and National Change of Address searches to increase the likelihood of delivery of the Class Notice to Class Members, and to re-mail the notice packets returned by the Postal Service without a forwarding address upon locating new or alternate addresses after a reasonable search.

IT IS FURTHER ORDERED A Class Member will not be entitled to opt out of the settlement established by the Settlement Agreement unless the Class Member submits a valid opt-out request ("Opt-Out Request"). A valid Opt-Out Request must:

(i) contain the Class Member's full name and current address;

(ii) the Action name and/or case number;

(iii) a statement clearly expressing the Class Member's desire to be excluded from (or opt out of) the Settlement; and

(iv) be returned so that it is postmarked on or before the expiration of the Notice Period.

Alternatively, a Class Member may fill out the Opt-Out Request Form attached to the Class Notice and return it so that it is postmarked on or before the expiration of the Notice Period. Any Class Members who worked during the PAGA Period and who opt out of the Settlement will still be considered Aggrieved Employees for purposes of the Settlement Agreement.

IT IS FURTHER ORDERED Any Class Member who fails to submit a timely, complete, and valid Opt-Out Request will be barred from opting out of the Settlement Agreement or the settlement, unless otherwise ordered by the Court. If the Settlement Administrator receives a timely Opt-Out Request that is incomplete, it will make reasonable attempts to contact the Class Member to cure the defect. The Settlement Administrator will not consider any Opt-Out Request postmarked after the end of the Notice Period but will report its receipt of any such requests to Class Counsel and counsel for Defendant. It shall be presumed that if an Opt-Out Request is not postmarked on or before the end of the Notice Period, the Class Member did not make the request in a timely manner. Absent good cause found by the Court, a declaration submitted by any Class Member attesting to the mailing of an Opt-Out Request on or before the expiration of the Notice Period shall be insufficient to overcome the conclusive presumption that the Opt-Out Request was untimely. Under no circumstances shall the Settlement Administrator have the authority to extend the deadline for Class Members to submit a request to opt out of the settlement without the Parties' joint written consent.

IT IS FURTHER ORDERED Any Class Member may object to the Settlement. Any written objection must be mailed to the Settlement Administrator (who shall promptly provide a copy to Class Counsel and counsel for Defendant) by the close of the Notice Period. Class Counsel will ensure that any written objections get filed with the Court concurrently with the final approval documents by having it attached to the Settlement Administrator's Declaration. Class Members who have not objected in writing may still appear and be heard at the Settlement Hearing. Written objections to the Settlement must contain at least the following: (i) the objecting Class Member's full name and current address; (ii) a clear reference to the Action by name and/or case number; and (iii) a statement of the specific reasons why the objector believes the Settlement is unfair or objects to the Settlement.

Alternatively, a Class Member may fill out the Notice of Objection to Class and PAGA Action Settlement Form attached to the Class Notice. In addition, though not required, the Parties ask that any objecting Class Member also include a statement of whether the objector intends to appear at the final approval hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number. In addition, Class Members may appear at the final approval hearing to state their objection even if they do not submit a written objection during the Notice Period.

IT IS FURTHER ORDERED Class Counsel or Defendant's counsel may, up to five court days before the Final Hearing Date, file responses to any written objections submitted to the Court.

Unless they opt out of the Settlement as specified in Paragraph 61 of the Settlement Agreement, Class Members who object to the proposed settlement or the Agreement will remain Participating Class Members, and shall be deemed to have voluntarily waived their right to pursue an independent remedy against Defendant and the other Released Parties. To the extent any Participating Class Member objects to the proposed settlement or Agreement and such objection is overruled in whole or in part, such individuals will be bound by the Court's Final Approval Order. In the event that any person objects to or opposes this proposed settlement or the Agreement, or attempts to intervene in or otherwise enter the Actions, the Parties and Class Counsel will use their best efforts to defend the Settlement. A Class Member cannot both opt out and object to the Settlement. If a Class Member both objects and opts out of the Settlement, the opt-out will control and the objection will be deemed invalid.

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

IT IS FURTHER ORDERED that the Final Approval Hearing shall be held on May 12, 2025 at 1:30 ~~a.m.~~ p.m. in Department S17 of the above captioned Courthouse to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Order Granting Preliminary Approval, and to consider the application of Class Counsel for an award of attorneys' fees, costs, and Named Plaintiffs Enhancement Awards. The Court may continue the Final Approval Hearing to another date at its discretion.

IT IS FURTHER ORDERED that all briefs and materials in support of an Order Granting Final Approval and application for attorneys' fees and costs and class representatives enhancements shall be filed with this Court no later than sixteen court days before the date set for the Final Approval Hearing.

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

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

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

IT IS SO ORDERED.

Dated: Jan. 7, 2025, ~~2024~~

HON. JOSEPH T. ORTIZ
JUDGE OF THE SUPERIOR COURT

EXHIBIT B

JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
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Attorneys for Plaintiff DAVID R. SIERRA,
Individually and on behalf of all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DAVID R. SIERRA, individually and on behalf of all others similarly situated, Plaintiff, vs. NATIONAL RETAIL TRANSPORTATION, INC., a Pennsylvania Corporation and DOES 1 - 50, inclusive, Defendants.	Case No.: CIVSB2222831 Related Case No. CIVSB2227785 **SETTLEMENT AGREEMENT AND STIPULATION TO RESOLVE CLASS ACTION AND PAGA CLAIMS**

AND RELATED ACTION.

This Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims (the "**Settlement Agreement**," "**Agreement**," or "**Settlement**") is entered into to resolve the claims in the following actions: (1) *David R. Sierra v. National Retail Transportation, Inc.*, San Bernardino Superior Court Case No. CIVSB2222831 (the "Class Action"); and (2) *David R. Sierra v. National Retail Transportation, Inc.*, San Bernardino Superior Court Case No CIVSB2227785 (the "PAGA Action"); (3) *Keith Haller v. National Retail Transportation, Inc.*, San Bernardino Superior Court Case No. CIVSB2326201 (the "Haller Class Action"); and (4) *Keith Haller v. National Retail Transportation, Inc.,* Los Angeles Superior Court Case No 24CMCV00085 (the "Haller PAGA Action") (collectively, the "Actions"). This Agreement is entered into between Plaintiff David R. Sierra and Plaintiff Keith Haller ("Plaintiffs") and Defendant National Retail Transportation, Inc. ("Defendant") (Plaintiffs and Defendant are collectively referred to as the "Parties").

DEFINITIONS

1. Actions. "**Actions**" mean the Sierra Class Action, the Sierra PAGA Action, the Haller class Action, and the Haller PAGA Action.

2. Aggrieved Employees. "**Aggrieved Employees**" means all individuals who are or previously were employed by Defendant as non-exempt California employees during the PAGA Period (October 7, 2021, through April 30, 2024 or preliminary approval of the settlement, whichever is earlier). Defendant represents there are approximately 738 PAGA Members during the PAGA Period who worked approximately 47,439 Pay Periods during the PAGA Period.

3. Agreement or Settlement or Settlement Agreement. "**Agreement**" or "**Settlement**" or "**Settlement Agreement**" means this Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims, entered into by the Parties to resolve the Actions.

4. Attorneys' Fees and Costs. "**Attorneys' Fees and Costs**" means the amount authorized by the Court for: (i) an award of attorneys' fees to Class Counsel for litigation and resolution of the matter, in the amount that does not exceed 35% percent of the Gross Settlement Amount; and (ii) reimbursement of actual costs incurred by Class Counsel in connection with the Actions, in an amount to not to exceed $367,500.00.

5. Class Counsel. "**Class Counsel**" means James R. Hawkins, Gregory Mauro, Michael Calvo,

Lauren Falk, and Ava-Issary of JAMES HAWKINS APLC; and Jeffrey S. Herman, Nicholas J. De Blouw, Norman B. Blumenthal of BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP. Attorney's fees not to exceed 35% of the Gross Settlement Amount shall be split accordingly: 85% to JAMES HAWKINS APLC and 15% to BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW.

6. Class or Class Members. "**Class**" or "**Class Members**" means all persons who have been employed by Defendant as Non-Exempt Employees or equivalent positions, however titled, in the state of California during within four years from the filing of the Complaint in this action until its resolution. Defendant represents there are approximately 1,070 Class Members (522 current and 548 former) who worked any time during the period January 5, 2019, through April 30, 2024, or preliminary approval of the settlement, whichever is earlier ("Class Period").

7. Class Notice. "**Class Notice**" means the Notice of Class Action Settlement, attached as **Exhibit A** to this Agreement, or a substantially similar notice approved by the Court.

8. Class Period. "**Class Period**" means the period from January 5, 2019, through April 30, 2024.

9. Court. "**Court**" means the San Bernardino Superior Court, where the Actions are currently pending.

10. Defendant. "**Defendant**" means National Retail Transportation, Inc.

11. Effective Date. The "**Effective Date**" of this Agreement will be the later of (i) the 61st day after service of notice of entry of the Final Order and Final Judgment, if no appeal, review, or writ has been filed; or (ii) if an appeal, review, or writ is sought from the Final Order or Final Judgment, the day after the Final Order and Final Judgment are affirmed or the appeal, review, or writ is dismissed or denied, and the Final Order and Final Judgment are no longer subject to further judicial review. The Effective Date is conditioned upon the Court's having entered a Final Order and Judgment as set forth in this Agreement.

12. Employer's Taxes. "**Employer's Taxes**" means Defendant's share of the payroll taxes associated with the wage portion of the Individual Settlement Payments, which Defendant will pay separately from the Gross Settlement Amount.

13. Enhancement Award. "**Enhancement Award**" means the amount the Court authorizes to be paid to each Named Plaintiff in addition to their Individual Settlement Payments, in recognition of their effort and work in prosecution of the Actions, up to $10,000.00.

14. Final Hearing Date. "**Final Hearing Date**" means the date set by the Court for the hearing on final approval of the Settlement.

15. Final Order and Judgment. "**Final Order and Judgment**" means the proposed order granting final approval of the Settlement and the separate proposed judgment, which Plaintiff will submit to the Court with the motion for final approval of the Settlement.

16. General Release Named Plaintiffs Only. "**General Release**" means the general release of all claims as set forth in Paragraph 49.

17. Gross Settlement Amount. "**Gross Settlement Amount**" means the total settlement payment Defendant has agreed to make under this Agreement. The Gross Settlement Amount is $1,050,000.00.

18. Individual PAGA Payment. "**Individual PAGA Payment**" means a payment to an Aggrieved Employee of the employee's share of the PAGA Payment as set forth in this Agreement.

19. Individual Settlement Payment. "**Individual Settlement Payment**" means the individual settlement payment allocated to each Participating Class Member and/or Aggrieved Employee as set forth in this Agreement, and consists of the Participating Class Member Payment and the Individual PAGA Payment to the extent an employee is eligible.

20. Named Plaintiff. "**Named Plaintiffs**" means David R. Sierra and Keith Haller.

21. Notice Period. "**Notice Period**" means the time period commencing on the date the Class Notice is mailed to Class Members and ending 60 days thereafter unless a notice is remailed to a Class Member, in which case, the Notice Period shall end either 60 days after mailing or 45 days after remailing, whichever is later.

22. Net Class Settlement Amount. "**Net Class Settlement Amount**" means the settlement amount to be distributed to Participating Class Members, which is the Gross Settlement Amount less Attorneys' Fees and Costs, the Enhancement Award, the General Release Payment, the PAGA Amount, and Settlement Administration Costs.

23. <u>PAGA Claims</u>. "**PAGA Claims**" means, for the PAGA Period, claims for penalties under the California Private Attorneys' General Act (California Labor Code § 2698, *et seq*.) that (a) arise from the facts, matters, transactions or occurrences alleged in the Actions or that could have been alleged in the Actions based on such facts; and/or (b) arise from the facts, matters, transactions or occurrences alleged, or that could have been alleged, in the PAGA Notice Letters sent by Plaintiffs Sierra and Haller to the Labor and Workforce Development Agency ("**LWDA**") pursuant to Labor Code section 2699.3, including the letter sent by Plaintiff Sierra on or about October 7, 2022, and the letter sent by Plaintiff Haller on October 19, 2023, asserting that Defendant violated various provisions of the Labor Code. Without limiting the foregoing, and in addition to the foregoing, the PAGA Claims include claims premised on the failure to pay all minimum wages and overtime compensation including, but not limited to, time spent working off-the-clock; failure to provide meal periods and rest breaks or premium payments; failure to provide and maintain complete and accurate itemized wage statements; failure to keep complete and accurate payroll records; untimely payment of wages during employment and at the time of termination; failure to pay reporting time pay; failure to provide suitable seating; unlawful deductions; failure to provide sick pay; and violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198; in connection with the allegations in the LWDA Notices and Operative Complaint; and related violations of the applicable California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.* The PAGA Claims excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation claims, FEHA-related claims for retaliation, discrimination or harassment, and any claims outside of the PAGA Period.

24. <u>PAGA Amount</u>. "**PAGA Amount**" means the amount of $75,000.00, which represents the portion of the Gross Settlement Amount allocated to the settlement of the PAGA Claims. The PAGA Amount is paid from the Gross Settlement Amount, and will be allocated as set forth in this Agreement. The Parties agree that 75% of the PAGA Amount ($56,250) will be paid to the LWDA as the "**LWDA Payment**," and the remaining 25% ($18,750.00) will be allocated to the Aggrieved Employees as the "PAGA Payment."

25. PAGA Period. "**PAGA Period**" means the period from October 7, 2021, through April 30, 2024, or preliminary approval of the settlement, whichever is earlier.

26. Parties. "**Parties**" means the Defendant and the Named Plaintiffs, individually and on behalf of all Class Members and Aggrieved Employees. Each of the Parties may be referred to in the singular as a "**Party**."

27. Participating Class Member. "**Participating Class Member**" means each Class Member who has not timely opted out of the Settlement pursuant to this Agreement;

28. Settlement Class. "**Settlement Class**" means a class of all Participating Class Members.

29. Participating Class Member Payment. "**Participating Class Member Payment**" means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement, to be calculated in accordance with Paragraph 51.f., which is inclusive of the employee's share of taxes and withholdings with respect to the wages portion of the Participating Class Member Payment.

30. Preliminary Approval Order. "**Preliminary Approval Order**" means an order from the Court preliminarily approving this Settlement.

31. Released Parties. "**Released Parties**" means and includes National Retail Transportation, Inc. and National Retail Systems, Inc., and their respective current and former parents, predecessors or successors, holding companies, owners, subsidiaries, divisions, and affiliated or related persons or entities, and each of their respective officers, directors, managers, employees, insurers, partners, shareholders, members, attorneys, agents, executors, and assigns.

32. Released Claims. "**Released Claims**" means, for the duration of the Class Period, any and all claims, actions, or causes of action against Defendant and the other Released Parties (a) that are alleged in the operative complaints in the Actions; and/or (b) that could have been alleged in the operative complaints based upon or arising out of the facts alleged therein, except those arising under PAGA. Without limiting the foregoing, and in addition to the foregoing, the Released Claims include claims premised on the failure to pay all minimum wages and overtime compensation including, but not limited to, time spent working off-the-clock; failure to provide meal periods and rest breaks or premium payments; failure to provide and maintain complete and accurate itemized wage statements;

failure to keep complete and accurate payroll records; untimely payment of wages during employment and at the time of termination; failure to pay sick pay wages; unfair business practices; violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198; 2802; related violations of the applicable California Wage Orders; violations of all related or corresponding federal laws; and violations of California Business and Professions Code section 17200, *et seq* in connection with the alleged Labor Code violations alleged (or that could be alleged based on the facts pled) in the Actions. The Released Claims excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation claims, FEHA-related claims for retaliation, discrimination or harassment, and any claims outside of the Class Period.

33. Settlement Administration Costs. "**Settlement Administration Costs**" means the costs of settlement administration, including costs of notice to Class Members, distributing settlement payments, and any other fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement.

34. Settlement Administrator. "**Settlement Administrator**" means Apex Class Action, LLC, or such other third-party administrator chosen by the Parties and approved by the Court.

35. Settlement Hearing. "**Settlement Hearing**" means the hearing on the Final Hearing Date at which the Court will determine whether to fully and finally approve the fairness and reasonableness of this Agreement.

RECITALS

36. On October 7, 2022, Plaintiff Sierra submitted a PAGA Notice to the LWDA.

37. On October 7, 2022, Plaintiff Sierra filed a putative Class Action against Defendant entitled *David R. Sierra v. National Retail Transportation, Inc.*, San Bernardino Superior Court Case No. CIVSB2222831 (the "Class Action").

38. On December 13, 2022, Plaintiff Sierra filed the PAGA Action against Defendant in a case entitled *David R. Sierra v. National Retail Transportation, Inc.*, San Bernardino Superior Court Case No CIVSB2227785 (the "PAGA Action").

39. The Class Action and PAGA Action allege that Defendant violated various wage-and-hour

laws, including but not limited to: (1) Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194; (2) Failure to Pay Timely Wages Required by Labor Code § 203; (3) Failure to Timely Pay Wages During Employment Required by Labor Code § 204; (4) Failure to Provide Accurate Wage Statements Required by Labor Code §§ 226, 226.3, 558.1; (5) Failure to Reimburse Business Expenses, (6) for Unlawful Deductions Pursuant to Labor Code 221; and (7) Violation of Business & Professions Code § 17200, et seq. and (9) penalties pursuant to the California Private Attorneys General Act.

40. On October 20, 2023, Plaintiff Haller filed a putative Class Action against Defendant entitled *Keith Haller v. National Retail Transportation, Inc.*, San Bernardino Superior Court Case No. CIVSB2326201 (the "Haller Class Action").

41. On January 22, 2024, Plaintiff Haller filed a PAGA Action against Defendant in a case entitled *Keith Haller v. National Retail Transportation, Inc.*, Los Angeles Superior Court Case No 24CMCV00085 (the "Haller PAGA Action").

42. The Haller Class Action and Haller PAGA Action allege that Defendant violated various wage-and-hour laws, including but not limited to: (1) Failure to Pay Minimum Wages as Required by Labor Code §§ 1194, 1197, and 1197.1; (2) Failure to Pay Overtime as Required by Labor Code § 510; (2) Failure to Pay Timely Wages as Required by Labor Code § 203; (3) Failure to Provide Required Meal Periods as Required by Labor Code §§ 226.7 and 512, and the applicable Wage Order; (4) Failure to Provide Required Rest Periods as Required by Labor Code §§ 226.7 and 512, and the applicable Wage Order; (5) Violation of Accurate Wage Statements as Required by Labor Code § 226; (5) Failure to Reimburse Business Expenses as Required by Labor Code § 2802; (7) Failure to Pay Sick Pay Wages as Required by Labor Code §§ 201-203, 233, and 246; and (8) penalties pursuant to the California Private Attorneys General Act.

43. During formal and informal discovery, and in preparation for the mediation, Defendant provided Class Counsel with the workweek count, current versus former class member count, a 30% sample of time and payroll records for Class Members and relevant policies for Class Members during the Class Period.

44. On January 31, 2024, the Parties participated in mediation with Jeffrey P. Fuchsman

(the "**Mediator**"), a respected mediator of complex wage-and-hour actions. Although the mediation did to resolve that day, the parties continued settlement discussions. On or about April 3, 2024, with the assistance of the Mediator's evaluations, the mediator made a mediator proposal which was accepted by both sides, and the Parties reached the settlement that is memorialized in this Agreement.

45. Defendant denies that Defendant engaged in any misconduct in connection with the wage-and-hour practices associated with the Class Members (inclusive of the Aggrieved Employees). Defendant further denies that Defendant has any liability of any kind associated with the claims alleged in the Actions. Defendant contends that Defendant has complied with both federal and state wage-and-hour laws, and all other laws regulating its relationship with the Class Members and the Aggrieved Employees, including the Named Plaintiffs.

46. Class Counsel has investigated the facts relating to the Actions. Settlement discussions were conducted at arm's length during a full-day mediation with a neutral third-party mediator, and the Settlement is the result of an informed and detailed analysis of Defendant's potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on the documents and data produced, as well as Class Counsel's own independent investigation and evaluation, Class Counsel believes that the Settlement documented by this Settlement Agreement is fair, reasonable, and adequate, and in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay and defenses asserted to the merits of the Actions. While Defendant specifically denies any liability in the Actions, Defendant has agreed to enter into this Settlement to avoid the costs associated with defending the Actions.

47. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement Agreement, other than the above-referenced Haller Action.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the recitals listed above and the promises and warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth below, Named Plaintiff, individually and on behalf of the Class Members, Aggrieved Employees, and, to the extent permitted by law, the State of

California, and Defendant agrees that the Actions shall be and are finally and fully compromised and settled on the following terms and conditions:

48. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendant and the other Released Parties do not admit, and specifically deny, that they have violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to the Class or the Aggrieved Employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant or any of the other Released Parties of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

49. Conditional Nature Of Settlement. For settlement purposes *only*, the Parties agree that (a) a class may be certified in the Actions pursuant to California Code of Civil Procedure Section 382, and (b) the Actions may proceed as a PAGA representative action.

a. The Parties intend their settlement to be contingent upon the preliminary and final approval of each and every term of this Agreement, without material modification. The Parties and their respective counsel shall use their respective best efforts to obtain Court approval and implement this Agreement in accordance with its terms. If the Court does not approve this Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a resolution, the Parties agree to refer their dispute to the Mediator for informal assistance in seeking a resolution. If thereafter the Parties are unable to resolve the dispute, the Parties intend this Agreement to become null and void, and unenforceable, in which event the settlement terms set forth in this Agreement, including any modifications made with the consent of the Parties, and any action taken or to be taken in connection with this Agreement shall be terminated and shall become null and void and have no further force or effect, and the class certified for settlement purposes pursuant to this Agreement will be decertified for all purposes.

b. In the event the Court does not grant preliminary or final approval of the Parties' settlement, or in the event that this Agreement shall terminate or the settlement embodied in this Agreement does not become effective for any reason, the Agreement and all negotiations, court orders and proceedings relating to the Agreement shall be without prejudice to the rights of the Named Plaintiffs, Class Members, Aggrieved Employees, and Defendant, each of whom shall be restored to their respective positions existing prior to the execution of this Agreement, and evidence relating to the Agreement and all negotiations shall not be discoverable or admissible in the Actions or any other litigation. Defendant does not waive, and instead expressly reserves, its rights to challenge the propriety of class certification and/or the Actions proceeding on a representative basis for any purpose should the Court not grant preliminary or final approval of the Parties' settlement.

50. Participating Class Members' Release Of Claims. Upon the funding of the Gross Settlement Amount and the Employer's Taxes necessary to effectuate the Settlement to the Settlement Administrator, the Named Plaintiffs and all Participating Class Members shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties from the Released Claims that arose during the Class Period.

a. This release by the Named Plaintiffs and each Participating Class Member is intended to settle any and all of the Released Claims that any of them may have against Defendant or any of the Released Parties during the Class Period.

b. Because it is impossible or impracticable to have each Class Member execute this Agreement, the Class Notice will advise all Class Members of the binding nature of the release and such notice will have the same force and effect as if the Agreement were executed by each Class Member.

51. Aggrieved Employees' Release of PAGA Claim. In exchange for the PAGA Amount recited in this Agreement, the Named Plaintiffs, as the representatives for the State of California and all Aggrieved Employees (to the extent permitted by law), and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns will, upon payment of the Gross Settlement Amount forever completely release and discharge Defendant and each of the Released Parties from the PAGA Claims that arose during the PAGA Period.

52. Full Release By The Named Plaintiffs. Upon payment of the Gross Settlement Amount and the Employer's Taxes necessary to effectuate the settlement to the Settlement Administrator, the Named Plaintiffs fully release and discharge Defendant and the other Released Parties from the Released Claims and any other claims that the Named Plaintiffs now have or claim to have, or has ever had or claimed to have, against Defendant and the Released Parties. Without limiting the generality of the foregoing, the Named Plaintiffs specifically and expressly release to the maximum extent permitted by law any claims against Defendant and the Released Parties, arising out of or relating to the Named Plaintiffs' employment or the termination of their employment with Defendant and any other Released Party. This general release by the Named Plaintiffs includes a waiver of Named Plaintiffs' rights under Civil Code Section 1542, which provides: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

53. No Prior Assignments. The Named Plaintiffs represent and warrant that they have 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 released and discharged by this Agreement.

54. Settlement Payments And Calculation Of Claims. Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of $1,050,000.00. The Gross Settlement Amount includes, but is not limited to, payments to be made to Participating

Class Members, Class Counsel's Attorneys' Fees and Costs, Enhancement Award to the Named Plaintiffs, General Release Payment to the Named Plaintiffs, the PAGA Amount, and Settlement Administration Fees and Costs. For the avoidance of doubt, subject to the conditions set forth in this Agreement, Defendant shall not be required to pay any amount over $1,050,000.00 for this Settlement, apart from the employer's share of applicable taxes which will be paid in addition to the Gross Settlement Amount, and as set forth in Paragraph 50. The following table summarizes the allocation of the Gross Settlement Amount:

Gross Settlement Amount of $1,050,000.00, Allocated as Follows:

- **$75,000.00** for the PAGA Payment
  - **$56,250.00** for the LWDA Payment
  - **$18,750.00** for payments to Aggrieved Employees on a *pro rata* basis (i.e., Individual PAGA Payment)
- Class Counsel Attorneys' Fees not to exceed **$367,500.00**
  - Attorneys' Fees are to be split between James Hawkins APLC (85%) and Blumenthal Nordrehaug Bhowmik De Blouw LLP (15%)
- Class Counsel Costs not to exceed **$25,000.00**
- Up to **$10,000** for an Enhancement Award for each of the Named Plaintiffs
- Settlement Administration Costs, not to exceed **$12,500.00**
- Approximately **$550,000.00** paid to Class Members on a *pro rata* basis (i.e., Participating Class Member Payment)

55. Settlement Escalator. The Settlement is based on the representation that there were no more than 108,033 non-exempt workweeks worked by the Class Members as of December 31, 2023. If that number is incorrect by more than 10%, Defendant shall increase the Gross Settlement Amount proportionally. For example, if the number is 12% higher, the Gross Settlement Amount will be increased by 2%.

56. Apportionment of Gross Settlement Amount. The Parties agree, subject to Court approval and the conditions specified in this Agreement, that the Gross Settlement Amount shall be apportioned as follows:

a. Class Counsel Attorneys' Fees and Costs: At the final approval hearing, Class

Counsel will apply to the Court for an award of Attorneys' Fees of no more than thirty-five percent of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 50 of this Agreement, equals $367,500.00. JAMES HAWKINS APLC is to receive 85% of the Attorneys' Fees awarded and BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP is to receive 15% of the Attorneys' Fees awarded. Class Counsel will also apply to the Court for an award of actual costs incurred by Class Counsel not to exceed the amount of $367,500.00. These fees and costs are included in, and shall come from, the Gross Settlement Amount. Class Counsel will be issued an IRS Form 1099 for any fees and costs awarded by the Court pursuant to this Paragraph 51.a. Except as provided in this Paragraph 51.a, each party will bear its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Actions. If the Court awards a lower amount of Attorneys' Fees and Costs than the amount requested, any amount not awarded will be part of the distribution to the Participating Class Members as set forth in this Agreement and shall not be a reason to invalidate/terminate this Agreement.

b. Settlement Administrator Costs: At the final approval hearing, Class Counsel will apply to the Court for approval of Settlement Administration costs, currently estimated at $12,500.00 These costs are included in, and shall come from, the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less than $12,500.00 the difference shall be added to the Net Class Settlement Amount. If the Settlement Administration Costs exceed $12,500.00 then such excess will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay these additional costs.

c. Named Plaintiffs Enhancement Awards: At the final approval hearing, Class Counsel will apply to the Court for awards of up to $10,000.00 to Named Plaintiffs as an Enhancement Award for their services and for assuming the risks associated with this litigation, for the time spent in assisting Class Counsel to litigate this Action.

Defendant will not oppose such application. The Enhancement Award is included in, and shall come from, the Gross Settlement Amount. Named Plaintiff will be issued an IRS Form 1099 for the Enhancement Award approved by the Court pursuant to this Paragraph. The Enhancement Award payable to Named Plaintiff shall be in addition to any payment they may receive pursuant to Paragraph 51.f, below. If the Court awards less than the amount requested, any amount not awarded will be part of the distribution to the Participating Class Members as set forth in this Agreement and shall not be a reason to invalidate/terminate this Agreement.

d. PAGA Amount: At the final approval hearing, Class Counsel will apply to the Court for approval of the PAGA Amount of $75,000.00 for claims for civil penalties asserted under PAGA. Class Counsel will submit notice of this Settlement to the LWDA, as required by Labor Code § 2699(*l*)(2). The Parties agree that 75% of the PAGA Amount ($56,250.00) will be paid to the LWDA as the "**LWDA Payment**," and the remaining 25% ($18,750.00) will be allocated to the Aggrieved Employees as the "PAGA Payment." The portion of the PAGA Payment allocated to each of the Aggrieved Employees will be calculated using the same formula as set forth in Paragraph 52.f, but will be limited to Pay Periods worked during the PAGA Period. Any Class Members who worked during the PAGA Period and who opt out of the Settlement will still be considered Aggrieved Employees for purposes of this Paragraph 52.e and, therefore, will (i) receive their portion of the PAGA Payment (the Individual PAGA Payment); and (ii) release all PAGA Claims against the Released Parties.

e. Individual Settlement Payments. The Individual Settlement Payments shall consist of: (i) each Participating Class Member's *pro rata* portion of the Net Class Settlement Amount (the "**Participating Class Member Payment**"); and (ii) if applicable, each Aggrieved Employee's *pro rata* portion of the PAGA Payment (the Individual PAGA Payment).

i. Participating Class Member Payment: After deducting the approved amounts specified in Paragraphs 51.a-e above, each Participating Class Member will be entitled to a *pro rata* portion of the remaining amount. Participating Class Member Payments will be calculated from the Net Class Settlement Amount based on the respective number of weeks worked by each Participating Class Member in a non-exempt position during the Class Period, rounded up to the nearest whole week. All Class Members will be deemed to have worked during at least one week during the Class Period. Each Participating Class Member's share of the Net Class Settlement Amount will be calculated by dividing the Participating Class Member's weeks worked in a non-exempt position by the total number of weeks worked by all Class Members in a non-exempt position during the Class Period and multiplying this figure by the Net Class Settlement Amount. The Class Notice will include the number of weeks that the Class Member worked during the Class Period and the amount the Class Member is estimated to receive under the terms of the Settlement.

ii. Individual PAGA Payment: For each Aggrieved Employee, the Individual Settlement Payment will also include the Class Member's *pro rata* share of the PAGA Payment, as set forth in Paragraph 52.e (the Individual PAGA Payment).

f. Participating Class Member Payments shall be distributed only to Participating Class Members. The portion of the Net Class Settlement Amount allocated to Class Members who opt out of the Settlement will be distributed to Participating Class Members on a *pro rata* basis based on the formula set forth in Paragraph 52.f. Individual PAGA Payments will be distributed to all Aggrieved Employees.

g. The Parties agree that, under no circumstances shall Defendant be obligated to pay any amount under this Agreement to any Class Member other than Participating Class Members, with the exception of the Individual PAGA Payments which are not affected by a Class Member opting-out of the Settlement. In addition, the Parties agree that, except as provided in Paragraph 50, under no circumstances shall Defendant be obligated to pay more than the Gross Settlement Amount in full settlement of the Actions.

57. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Agreement, including the Individual PAGA Payments made to Aggrieved Employees, will not be utilized to calculate any additional benefits under any benefit plans to which any Participating Class Member or Aggrieved Employees may be eligible including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts which any Participating Class Member or Aggrieved Employee may be entitled to under any benefit plans.

58. Taxation Of Settlement Proceeds. All settlement payments paid to Participating Class Members, Aggrieved Employees, and the Named Plaintiffs, will be paid in a net amount after applicable state and federal tax withholdings, including payroll taxes, have been deducted.

a. The Participating Class Member Payments shall be reported as follows: 10% of the amount distributed to each Participating Class Member will be considered wages, and will be reported as such to each Participating Class Member on a W-2 Form; (ii) 10% of the amount distributed to each Participating Class Member will be considered interest on the unpaid wages, and (iii) approximately 80% to statutory penalties, and will be reported as such to each Participating Class Member on an IRS Form 1099. The PAGA Payments distributed to each Aggrieved Employee will be considered penalties and will be reported on an IRS Form 1099.

b. Prior to mailing the Individual Settlement Payments, the Settlement Administrator will calculate, withhold from the Individual Settlement Payment, and remit to applicable governmental agencies sufficient amounts as may be owed by Participating Class Members for required withholdings and taxes, including all payroll taxes. The Settlement Administrator will issue appropriate tax forms to each Participating Class Member and Aggrieved Employee consistent with the foregoing breakdown. The Parties understand that the Named Plaintiffs, Participating Class Members, and Aggrieved Employees who receive an Individual Settlement Payment, including an

Individual PAGA Payment, pursuant to this Agreement shall be solely responsible for any and all tax obligations associated with such receipt.

c. The Parties stipulate that the Settlement Fund (as defined at Paragraph 59) will qualify as a settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq*. of the federal income tax regulations. Furthermore, the Settlement Administrator is designated as the "**Administrator**" of the qualified settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations. Accordingly, all taxes imposed on the gross income of the Settlement Fund and any tax-related expenses arising from any income tax return or other reporting document that may be required by the Internal Revenue Service or any state or local taxing body will be paid from the Settlement Fund.

d. All Parties represent and acknowledge that nothing in this Agreement constitutes tax advice regarding the tax treatment of payments under federal, state, or local law. The Named Plaintiffs, Participating Class Members, and Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement and Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. In the event that any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, including Named Plaintiffs, such Class Member or Aggrieved Employee assumes all responsibility for the payment of such taxes.

59. <u>Notice Procedure</u>. Within 15 business days after entry of the Preliminary Approval Order, Defendant will provide to the Settlement Administrator a list of Class Members that identifies each Class Member by name, Social Security Number, and last-known address; and specifies the number of weeks worked by each Class Member in a non-exempt position during the Class Period and the PAGA Period (the "**Class List**"). Defendant will provide the Class List in an Excel file or other format reasonably acceptable to the Settlement Administrator. The Settlement Administrator will keep the list confidential, except it shall be provided to Class Counsel upon request with Social

Security Numbers and address information redacted, and Class Counsel agrees to use such information only for the purposes described in this Agreement.

a. Upon receipt of the Class List, the Settlement Administrator shall perform a search based upon the National Change of Address Database to update and correct any known or identifiable address changes. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. Within 14 calendar days after receipt of the Class List from Defendant, the Settlement Administrator will send the Class Notice to each Class Member via First Class U.S. Mail. Receipt of the Class Notice shall be presumed as to each and every Class Member whose Class Notice is not returned to the Settlement Administrator as undeliverable within 14 calendar days after mailing.

b. The Settlement Administrator will re-mail any notice packet returned by the United States Postal Service with a forwarding address on or before the expiration of the Notice Period. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within 14 calendar days after re-mailing, received the Class Notice. Class Members who receive a re-mailed Class Notice shall have 45 days from the date of the re-mailing to object, opt out, or dispute the workweeks attributed to him or her.

c. The Settlement Administrator will use the appropriate skip tracing and National Change of Address searches to increase the likelihood of delivery of the Class Notice to Class Members, and to re-mail the notice packets returned by the Postal Service without a forwarding address upon locating new or alternate addresses after a reasonable search.

d. Class Counsel will provide to the Court, in connection with seeking final approval of the Settlement, a declaration from the Settlement Administrator confirming that the Class Notice was mailed to all Class Members as required by this Agreement, as well as any additional information Class Counsel deems appropriate to provide to the Court.

60. Dispute Procedure. The Class Notice will include a procedure by which a Class Member may dispute the number of workweeks allocated to the Class Member by submitting a written dispute sent via U.S. Mail to the Settlement Administrator postmarked no later than the expiration of the Notice Period ("**Workweek Dispute**"). To be valid, a Workweek Dispute must contain the following: (i) the Class Member's full name and current address; (ii) the Action name and/or case number; (iii) the number of workweeks the Class Member maintains is correct; and (iv) documentary evidence sufficient to prove that Defendant's calculation of the workweeks for the Class Member is incorrect, if any. Upon receipt of notice of a Workweek Dispute, the Settlement Administrator shall promptly serve Defendant's counsel with a copy of the Workweek Dispute and any accompanying papers. No Workweek Dispute shall be effective or considered for any purpose unless it is timely mailed by U.S. mail to and received by the Settlement Administrator as provided above. Defendant shall have the right to respond to the Workweek Dispute by any Class Member. The Settlement Administrator will also attempt to resolve the Workweek Dispute.

a. Within 14 calendar days after the close of the Notice Period, the Settlement Administrator will provide Class Counsel and Defendant's counsel with a report listing the amount of all Individual Settlement Payments, including Individual PAGA Payments, to be made to Participating Class Members and Aggrieved Employees. The report to Class Counsel will not include the names or contact information of Participating Class Members and Aggrieved Employees.

61. Opt-Out Procedure. Unless a Class Member opts out of the settlement described in this Agreement, the Class Member will be bound by the terms and conditions of this Agreement, including the release of the Released Claims that arose during the Class Period. A Class Member will not be entitled to opt out of the settlement established by this Agreement unless the Class Member submits a valid opt-out request ("**Opt-Out Request**"). A valid Opt-Out Request must: (i) contain the Class Member's full name and current address; (ii) the Action name and/or case number; (iii) a statement clearly expressing the Class Member's desire to be excluded from (or opt out of) the Settlement; and (iv) be returned so that it is postmarked on or before the expiration of the Notice Period. Alternatively, a Class Member may fill out the Opt-Out Request Form attached to

the Class Notice and return it so that it is postmarked on or before the expiration of the Notice Period. Any Class Members who worked during the PAGA Period and who opt out of the Settlement will still be considered Aggrieved Employees for purposes of this Agreement.

a. Upon receipt of any Opt-Out Request within the Notice Period, the Settlement Administrator shall review the Opt-Out Request to confirm that it complies with the opt-out requirements of this Agreement.

b. Any Class Member who fails to submit a timely, complete, and valid Opt-Out Request will be barred from opting out of this Agreement or the settlement, unless otherwise ordered by the Court. If the Settlement Administrator receives a timely Opt-Out Request that is incomplete, it will make reasonable attempts to contact the class member to cure the defect. The Settlement Administrator will not consider any Opt-Out Request postmarked after the end of the Notice Period, but will report its receipt of any such requests to Class Counsel and counsel for Defendant. It shall be presumed that if an Opt-Out Request is not postmarked on or before the end of the Notice Period, the Class Member did not make the request in a timely manner. Absent good cause found by the Court, a declaration submitted by any Class Member attesting to the mailing of an Opt-Out Request on or before the expiration of the Notice Period shall be insufficient to overcome the conclusive presumption that the Opt-Out Request was untimely. Under no circumstances shall the Settlement Administrator have the authority to extend the deadline for Class Members to submit a request to opt out of the settlement without the Parties' joint written consent.

c. At the close of the Notice Period, the Settlement Administrator shall report the names of all individuals who opted out of the Agreement to the parties and include this information in a Declaration regarding the distribution of the notice that will be provided in support of Plaintiff's Motion for Final Approval.

d. If 5% or more Class Members timely opt out of the settlement, Defendant will have the sole and absolute discretion to withdraw from this Agreement within fourteen (14) calendar days after Defendant receives notice of the number of opt outs. Defendant will provide written notice to Class Counsel if it intends to withdraw from this Agreement. In the event that 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, and the Agreement shall become null and void and have no further force or effect, and the class certified pursuant to this Agreement will be decertified for all purposes. If Defendant chooses to terminate this Settlement Agreement under this provision, it shall be responsible to pay the Settlement Administrator's fees and costs. If the Settlement Agreement is terminated for any other reason, including the Court's failure to grant final approval of the Parties' settlement, then Class Counsel and Defendant will be jointly responsible for the Settlement Administrator's fees and costs.

62. Objections To Settlement. Any Class Member may object to the Settlement. Any written objection must be mailed to the Settlement Administrator (who shall promptly provide a copy to Class Counsel and counsel for Defendant) by the close of the Notice Period. Class Counsel will ensure that any written objections get filed with the Court concurrently with the final approval documents by having it attached to the Settlement Administrator's Declaration. Class Members who have not objected in writing may still appear and be heard at the Settlement Hearing.

a. Written objections to the Settlement must contain at least the following: (i) the objecting Class Member's full name and current address; (ii) a clear reference to the Action by name and/or case number; and (iii) a statement of the specific reasons why the objector believes the Settlement is unfair or objects to the Settlement. Alternatively, a Class Member may fill out the Notice of Objection to Class and PAGA Action Settlement Form attached to the Class Notice. In addition, though not required, the Parties ask that any objecting Class Member also include a statement of whether the objector intends to appear at the final approval hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number. In addition,. Class Members may appear at the final approval hearing to state their objection even if they do not submit a written objection during the Notice Period.

b. Class Counsel or Defendant's counsel may, up to five court days before the Final Hearing Date, file responses to any written objections submitted to the Court.

c. Unless they opt out of the Settlement as specified in Paragraph 56, Class Members who object to the proposed settlement or the Agreement will remain Participating Class Members, and shall be deemed to have voluntarily waived their right to pursue an independent remedy against Defendant and the other Released Parties. To the extent any Participating Class Member objects to the proposed settlement or Agreement and such objection is overruled in whole or in part, such individuals will be bound by the Court's Final Approval Order.

d. In the event that any person objects to or opposes this proposed settlement or the Agreement, or attempts to intervene in or otherwise enter the Actions, the Parties and Class Counsel will use their best efforts to defend the Settlement.

e. A Class Member cannot both opt out and object to the Settlement. If a Class Member both objects and opts out of the Settlement, the opt-out will control and the objection will be deemed invalid.

63. Funding And Distribution Of Settlement.

a. Within ten calendar days of the close of the Notice Period, the Settlement Administrator will provide a draft declaration to Class Counsel and Defendant's counsel setting forth the number of Participating Class Members and Aggrieved Employees; the identity of those individuals who opted out of the Settlement; the total amount payable to all Participating Class Members and Aggrieved Employees; and the total PAGA Amount, Attorneys' Fees and Costs, Enhancement Award, General Release Payment, Settlement Administration Costs, Net Class Settlement Amount, and the appropriate applicable employer's taxes for any portion of the Individual Settlement Payments designated as wages.

b. On the later of fifteen calendar days of the Settlement Administrator providing all the information necessary for Defendant to remit payment or fifteen calendar days after the Effective Date, Defendant shall remit to the Settlement Administrator: (i) the Gross Settlement Amount of $1,050,000.00 and (ii) the employer's taxes for any portion of the Individual Settlement Payments designated as wages (the collectively, "**Settlement Fund**"). The delivery by Defendant of the Settlement Fund to the Settlement Administrator will constitute the full and complete discharge of the entire obligation of Defendant under this Agreement, unless anything further is requested by the Settlement Administrator to ensure timely and proper disbursement. No Released Party will have any further obligation or liability to the Named Plaintiffs, Participating Class Members, Aggrieved Employees, or Class Counsel under this Agreement, in connection with the claims released herein, regardless of whether the Named Plaintiffs, Participating Class Members, Aggrieved Employees, or Class Counsel receive the payments from the Settlement Administrator set forth in this Agreement.

c. The distribution of Individual Settlement Payments to Participating Class Members and Aggrieved Employees will occur no later than ten calendar days after receipt of the Settlement Fund from Defendant ("**Settlement Proceeds Distribution Deadline**"). The Settlement Administrator shall be deemed to have timely distributed Individual Settlement Payments, including Individual PAGA Payments, if it places in the mail the Individual Settlement Payments for all Participating Class Members and the Individual PAGA Payments for all Aggrieved Employees by the Settlement Proceeds Distribution Deadline. No person will have any claim against the Settlement Administrator, Defendant, Class Counsel, Defendant's counsel, or any other agent designated by the Named Plaintiffs or Class Counsel based upon the distribution of Individual Settlement Payments made substantially in accordance with this Agreement or further orders of the Court.

d. The distribution of the LWDA Payment, Attorneys' Fees and Costs, the Enhancement Award, and the General Release Payment shall occur no later than ten calendar days after the Settlement Administrator receives the Settlement Fund from Defendant.

e. If a Participating Class Member's or Aggrieved Employee's check is returned to the Settlement Administrator, the Settlement Administrator will make reasonable efforts to re-mail it to the Participating Class Member or Aggrieved Employee at the correct address. It is expressly understood and agreed that the checks for the Individual Settlement Payments, including the Individual PAGA Payments, will become void and no longer available if not cashed within 180 calendar days after mailing. The funds from uncashed and voided checks will be transferred to the State of California's Unclaimed Property Fund in the name of the Participating Class Member/Aggrieved Employee.

f. Defendant will not be obligated to make any payments contemplated by this Agreement unless and until the Court enters the Final Order and Judgment, and after the Effective Date of the Agreement.

g. Within sixty calendar days of the Settlement Proceeds Distribution Deadline, the Settlement Administrator will provide written certification of completion of settlement administration to Class Counsel and to Defendant's Counsel.

64. <u>Binding Effect Of Agreement On Class Members</u>. Subject to final Court approval and the occurrence of the Effective Date, and unless otherwise provided in this Agreement, all Participating Class Members will be bound by this Agreement.

65. <u>Binding Effect Of Agreement On Aggrieved Employees and State of California</u>. The Aggrieved Employees and the State of California, to the extent permitted by law, shall be deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make a claim against Defendant or any of the Released Parties for any of the PAGA Claims and to be bound by the release of the PAGA Released Claims during the PAGA Period as set forth in this Agreement.

66. <u>Provisional Approval Of Settlement</u>. Named Plaintiffs will file a motion in the Actions requesting that the Court enter the Preliminary Approval Order shortly after complete execution of this Agreement. Defendant will not oppose Class Counsel's motion for preliminary approval of the settlement so long as the motion and supporting papers are consistent with the terms of this Agreement. Class Counsel will provide Defendant's counsel at least 3 business days to review, and

provide comments to, the draft motion for preliminary approval of the settlement before the motion and supporting papers are filed with the Court. Notwithstanding the foregoing, Defendant may, without opposing the preliminary approval motion, advise the Court if Defendant dispute any of the factual statements concerning the claims at issue included by the Named Plaintiffs in the motion and supporting papers. Defendant's counsel will meet and confer with Class Counsel regarding any disputed factual statements before notifying the Court of any disputes.

67. Non-Interference With Claims Procedure. The Parties and their counsel agree that they will not advise, solicit, or otherwise encourage any Class Members to submit requests for exclusion or objections to the settlement or to appeal from the Final Order or Final Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

68. Final Order and Judgment. The Named Plaintiffs will request that the Court enter, after the Settlement Hearing finally approving this Agreement, a Final Order and Judgment. Named Plaintiffs will request that the Final Order and Judgment certify the Participating Class; find that this Agreement is fair, just, equitable, reasonable, adequate and in the best interests of the Class and the Aggrieved Employees; list the employees (if any) who opted-out of the settlement; order that the Participating Class Members release the Released Parties from the Released Claims; order that the Aggrieved Employees and the State of California release the Released Parties from the PAGA Claims as set forth in this Agreement (to the extent permitted by law); and require the Parties to carry out the provisions of this Agreement.

69. Automatic Voiding Of Agreement If Settlement Not Finalized. If for any reason the settlement set forth in this Agreement does not become final, the settlement will be null and void and the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be vacated, and the Parties will be returned to the status quo prior to entering this Agreement with respect to the Actions, as if the Parties had never entered into this Agreement, and the class certified pursuant to this Agreement will be decertified for all purposes. In addition, in such event, the Agreement and all negotiations, court orders, and proceedings relating to this Agreement shall be without prejudice to the rights of any and all parties to this Agreement, and evidence relating to the Agreement and all

negotiations shall not be admissible or discoverable in the Actions or otherwise.

70. No Double Recovery. No Class Member who has already released, assigned, or otherwise forfeited the claims asserted in the Action will be considered a Class Member or be entitled to recover under this Agreement. Such persons will be excluded from the Class List.

71. No Publicity. The Named Plaintiffs and Class Counsel agree that they shall not publicize the filing of the Actions, the Parties' settlement, this Agreement and its terms, or the negotiations leading to this Agreement with anyone other than the Court, Class Members, or those individuals necessary to effectuate the terms of the Agreement. The prohibition set forth in this Paragraph 66 includes, but is not limited to: (i) publication by Named Plaintiffs or Class Counsel on any website (including, without limitation, publishing on any Twitter account, Facebook, other social media, or blog, or business website) of the amount or terms of the settlement, with or without identifying information; and (ii) the submission of information to Verdicts & Settlements, Jury Verdicts, or any other publication that summarizes the results of jury verdicts and settlements.

a. Notwithstanding the foregoing, Class Counsel may respond to questions received from, and discuss any aspect of this Agreement with the Class Members or their legal representatives, the Settlement Administrator, the Court, and representatives of the California Labor and Workforce Development Agency.

b. Notwithstanding the forgoing, nothing in this Paragraph shall prohibit the filing of information with the Court or the LWDA relating to the Settlement that is necessary to effectuate this Agreement, or the online posting of documents relating to the Actions by the Settlement Administrator as permitted by this Agreement, including the Judgment entered by the Court.

c. The Named Plaintiffs and Class Counsel agree that all data and information informally produced by Defendant in connection with the settlement of these Actions will be maintained in confidence, and will not be shared with any other persons or entities.

72. Invalidation Of Agreement For Failure To Satisfy Conditions. If the Court makes material changes to the material terms or conditions of Paragraphs 1 through 66 of this Agreement that are

not agreed to by the Parties, either Party shall have the right to terminate this Agreement, in which case Defendant would not be obligated to make any payments to any Class Member, to Class Counsel, or to the Named Plaintiffs. The Parties shall meet and confer in good faith and involve mediator Jeffrey P. Fuchsman as necessary before exercising such right.

73. Modification In Writing. This Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by all signatories to this Agreement and approved by the Court. This Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

74. Ongoing Cooperation. The Named Plaintiffs and Defendant will execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement. In the event the Parties are unable to reach an agreement on the form or content of any document needed to implement the Settlement, or any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Mediator (Jeffrey Fuchsman) and, if still unable to resolve their dispute, the Court.

75. Notices. 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 or by first class mail to the Settlement Administrator approved by the Court and the undersigned persons at their respective addresses as set forth below:

CLASS COUNSEL

JAMES HAWKINS APLC
James R. Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
Lauren Falk, Esq.
Ava-Issary, Esq.
9880 Research Drive Suite 200
Irvine CA 92618
Tel.: (949) 387-7200

Blumenthal Nordrehaug Bhowmik De Blouw LLP
Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J.De Blouw (State Bar #280922)
Jeffrey S. Herman (State Bar #280058)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223

<u>COUNSEL FOR DEFENDANT</u>
HUSCH BLACKWELL
355 South Grand Avenue, Suite 2850
Los Angeles, California 90071
Telephone (213) 337-6577
Facsimile (213) 337-6551
Jon C. McNutt (State Bar No. 227761)
jon.mcnutt@huschblackwell.com

73. <u>Binding on Successors</u>. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives.

74. <u>Entire Agreement</u>. This Agreement constitutes the full, complete, and entire understanding, agreement, and arrangement between the Named Plaintiffs, the Class Members, and the Aggrieved Employees, on the one hand, and Defendant, on the other hand, with respect to the settlement of the Actions. This Agreement supersedes any and all prior oral or written understandings, agreements, and arrangements between the Parties with respect to the settlement of the Actions. Except for those set forth expressly in this Agreement, there are no other agreements, covenants, promises, representations or arrangements between the Parties with respect to the settlement of the Actions, the PAGA Claims, and the Released Claims against Defendant and its Released Parties. 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.

75. <u>Execution In Counterparts</u>. This Agreement may be signed in one or more counterparts. All executed copies of this Settlement Agreement, and photocopies of the Agreement (including DocuSign, facsimile and e-mail copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

76. <u>Captions</u>. The captions, section numbers, and paragraph 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.

77. Governing Law. This Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the State of California, without regard to conflict of law rules.

78. Reservation Of Jurisdiction. Notwithstanding the dismissal of the Actions and entry of the Final Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting and enforcing the terms of this Agreement pursuant to California Code of Civil Procedure section 664.6 and California Rules of Court, Rule 3.769(h).

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

80. Representation and Warranties. Class Counsel and the Named Plaintiffs represent and warrant to Defendant that they are not aware of any attorneys beyond those named as Class Counsel who have claims for fees arising out of the Actions or the Settlement contemplated by this Agreement.

81. Authorization to Act. Each Party to this Agreement covenants and warrants that (a) such Party has full power and authority to enter into and consummate all transactions contemplated by this Agreement and have duly authorized the execution, delivery, and performance of this Agreement; and (b) the person executing this Agreement for such Party has the full right, power, and authority to enter into this Agreement on behalf of such Party, and the full right, power, and authority to execute any and all necessary instruments in connection with the Settlement, and to fully bind such Party to the terms and obligations of this Agreement.

82. Representation By Counsel. The Parties acknowledge that each of them has been represented by their respective counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of their respective counsel. Further, the Named Plaintiffs and Class Counsel warrant and represent that there

are no liens on the Settlement Agreement, and that after entry by the Court of the Final Order and Judgment, the Settlement Administrator may distribute funds to Participating Class Members, Aggrieved Employees, Class Counsel, the LWDA, the Settlement Administrator, and the Named Plaintiffs as provided by this Agreement.

83. Representation By The Named Plaintiffs. The Named Plaintiffs agree not to request to be excluded from the Class and not to object to any terms of this Agreement. Any such request by the Named Plaintiffs for exclusion or objection shall be void and of no force or effect.

84. Additional Attorneys' Fees and Costs. No Participating Class Member, Aggrieved Employee, or Class Counsel, or any other attorney acting for any Participating Class Member or Aggrieved Employee may recover or seek to recover any amounts for fees, costs, or disbursements arising from the Actions or the Gross Settlement Amount from the Released Parties except as expressly provided for in this Agreement.

85. No Reliance on Representations. The Parties have made such investigations of the facts and the law pertaining to the matters described in this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any other Party, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any Party concerning this Agreement.

86. No Collateral Attack. This Agreement will not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Final Order and Dismissal. Such prohibited collateral attacks shall include but not be limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of their Individual Settlement Payment, or for opting out of the Settlement.

87. Within 30 days of the Effective Date, the Named Plaintiffs will request dismissal of the PAGA Action, the Haller Action, and the Haller PAGA Action, with prejudice as to individual claims. The representative claims in these matters will be dismissed without prejudice since such claims must be approved by a Court prior to dismissal with prejudice, and thus the representative

claims in these matters are being released and dismissed with prejudice as part of this Settlement in San Bernardino Case Number CIVSB2222831.

IT IS SO AGREED:

PLAINTIFF DAVID R. SIERRA

Dated: 10/23/2024

By: DocuSigned by: A80EFF7A7A7D4C8...
David R. Sierra
Named Plaintiff

PLAINTIFF KEITH HALLER

Dated: ________________

By: ________________
Keith Haller
Named Plaintiff

Dated: ________________

DEFENDANT NATIONAL RETAIL TRANSPORTATION, INC.

By: ________________

Title: ________________

claims in these matters are being released and dismissed with prejudice as part of this Settlement in San Bernardino Case Number CIVSB2222831.

IT IS SO AGREED:

PLAINTIFF DAVID R. SIERRA

Dated: ________________

By: ______________________________
David R. Sierra
Named Plaintiff

PLAINTIFF KEITH HALLER

Dated: Oct 22, 2024

By: Keith Haller (Oct 22, 2024 12:43 PDT)
Keith Haller
Named Plaintiff

Dated: ________________

DEFENDANT NATIONAL RETAIL TRANSPORTATION, INC.

By: ______________________________

Title: ______________________________

claims in these matters are being released and dismissed with prejudice as part of this Settlement in San Bernardino Case Number CIVSB2222831.

IT IS SO AGREED:

PLAINTIFF DAVID R. SIERRA

Dated: ________________

By: ________________________________
David R. Sierra
Named Plaintiff

PLAINTIFF KEITH HALLER

Dated: ________________

By: ________________________________
Keith Haller
Named Plaintiff

DEFENDANT NATIONAL RETAIL TRANSPORTATION, INC.

Dated: 10/28/2024

By: ________________________________

Title: General Counsel

APPROVED AS TO FORM ONLY AND AGREE TO BE BOUND BY PARAGRAPH 71:

Dated: 10/23/2024

JAMES HAWKINS APLC

By: ______________________
Gregory Mauro
Lauren Falk
Attorneys for Plaintiff Sierra

Dated: ______________

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: ______________________
Norman B. Blumenthal
Attorney for Plaintiff Haller

APPROVED AS TO FORM ONLY:

Dated: October 28, 2024

HUSCH BLACKWELL

By: Jon C. McNutt
Jon McNutt
Attorney for Defendant

HB: 4883-4690-0453.1

APPROVED AS TO FORM ONLY AND AGREE TO BE BOUND BY PARAGRAPH 71:

Dated: ________________ **JAMES HAWKINS APLC**

By: ______________________________
Gregory Mauro
Lauren Falk
Attorneys for Plaintiff Sierra

Dated: 10/22/24 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

By: ______________________________
Norman B. Blumenthal
Attorney for Plaintiff Haller

APPROVED AS TO FORM ONLY:

Dated: ________________ **HUSCH BLACKWELL**

By: ______________________________
Jon McNutt
Attorney for Defendant

HB: 4883-4690-0453.1

EXHIBIT C

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: **01/01/1900 to 04/18/2025**
Client: **DAVID R. SIE - David Sierra**
Matter: **NATIONAL RETAI - National Retail Transportation - Sierra v. National Reail Transportation**

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	$0.00						
10/07/2022	FIL	Filing Fee - LWDA Filing Fee	$75.00		Unbilled				
10/07/2022	POS	Postage - 10.7.22 mailing LWDA	$8.93		Unbilled				
10/07/2022	FIL	Filing Fee - 10.7.22 LWDA	$75.00		Unbilled				
10/07/2022	FST	First Legal Network - Filing - S&C, Initial Docs IN# 30219274	$92.41		Unbilled				
12/13/2022	FST	First Legal Network - Filing - S&C, Initial Docs IN# 30224217	$93.11		Unbilled				
02/28/2023	FST	First Legal Network - Process Serve - S&C, Initial Docs, Order, Complex IN# 30227367	$189.75		Unbilled				
03/02/2023	FST	First Legal Network - Filing - POS IN# 30230586	$134.11		Unbilled				
04/04/2023	FST	First Legal Network - Additional Billing - S&C, Initial Docs, Filing - Joint Initial CMC Report IN# 30233810	$1,664.61		Unbilled				
11/01/2023	FST	First Legal Network - Filing - Joint Stip to Continue the (2) IN# 30260163	$142.50		Unbilled				
11/21/2023	MED	Mediation Services- IN#126 CK#11290	$5,000.00		Unbilled				
01/23/2024	FST	First Legal Network - FIling - Joint Stip to Continue January IN# 30267292	$65.20		Unbilled				
01/30/2024	FST	First Legal Network - Filing - Notice Filed, Courtesy Delivery - Joint Report In# 30275374	$129.90		Unbilled				
01/31/2024	CRT	Court Documents- Related Case Complaint	$10.20		Unbilled				
02/06/2024	EXA	Expert Analysis IN#240201 CK#11495	$2,400.00		Unbilled				
03/27/2024	FST	First Legal Network - E-Filing - Joint Case Management Conference St IN# 30279435	$84.50		Unbilled				
06/28/2024	FST	First Legal Network - Courtesy Delivery - Stip and Order IN# 30287287	$58.25		Unbilled				
06/28/2024	FST	First Legal Network - Filing - Joint Stip to Continue July IN# 30290822	$37.95		Unbilled				
10/11/2024	LDS	Legal Document Server - E-Filing - Notice Filed IN# 10558830	$15.20		Unbilled				
10/21/2024	CRT	Court Documents- Complaints for cases Barahona (LASC: 21STCV46859) and Alvarez (SBSC: CIVSB2200676)	$20.70		Unbilled				

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
11/07/2024	LDS	Legal Document Server - E-Filing - Motion Re- 60, Declaration Filed, Declaration Filed, Proposed Order Received IN# 10706069	$90.25		Unbilled				
12/02/2024	LDS	Legal Document Server - E-Filing - Notice Filed IN# 10744397	$30.25		Unbilled				
12/09/2024	LDS	Legal Document Server - Court Filing - Amended Complaint IN# 10904236-01	$155.00		Unbilled				
12/09/2024	LDS	Legal Document Server - Courtesy Copy - Amended Complaint IN# 10904236-02	$45.00		Unbilled				
12/26/2024	LDS	Legal Document Server - E-Filing- Notice Filed IN# 10903908	$30.25		Unbilled				
01/14/2025	CCL	Court Call-01.06.2025-Prelim Approval	$72.00		Unbilled				
02/06/2025	LDS	Legal Document Server - E-Filing - Notice of Entry of Judgment IN# 11094248	$31.11		Unbilled				
		Total:	$10,751.18	$0.00					
		Balance:	$10,751.18						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee

Total Fees Billed- - - - - - - - - - - - - - - - - - - -	**$0.00**
Total Fees Unbilled : - - - - - - - - - - - - - - - - -	**$0.00**
Total Fees Received : - - - - - - - - - - - - - - - - -	**$0.00**
Total Soft Cost Billed : - - - - - - - - - - - - - - -	**$0.00**
Total Soft Cost Unbilled : - - - - - - - - - - - -	**$0.00**
Total Soft Cost Received : - - - - - - - - - - - -	**$0.00**
Total Hard Cost Billed : - - - - - - - - - - - - - -	**$0.00**
Total Hard Cost Unbilled : - - - - - - - - - - - -	**$10,751.18**
Total Hard Cost Received : - - - - - - - - - - - -	**$0.00**
Total Taxes Billed : - - - - - - - - - - - - - - - - - -	**$0.00**
Total Taxes Unbilled : - - - - - - - - - - - - - - - -	**$0.00**
Total Taxes Received : - - - - - - - - - - - - - - - -	**$0.00**
Total Late Charges Billed : - - - - - - - - - -	**$0.00**
Total Late Charges Unbilled: - - - - - - - - -	**$0.00**
Total Late Charges Received : - - - - - - - - -	**$0.00**
Trust Balance: -	**$0.00**

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 04/18/2025
Client: DAVID R. SIE - David Sierra
Matter: NATIONAL PAGA - National Retail Transportation PAGA - Sierra v. National Retail Transport

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	$0.00						
02/22/2023	FST	First Legal Network- Paga Complaint, Summons, Civil Case Cover Sheet, Cert of Assignment - IN# 30227367	$1,578.50		Unbilled				
04/03/2023	FST	First Legal Network - Process Serve - S&C, Initial Docs, Filing - POS, Plfs Ntc of ICMC Order IN# 30233810	$399.74		Unbilled				
06/13/2023	FST	First Legal Network - Filing - Clers Ntc of Conti, Joint CMC Report IN# 30240914	$232.22		Unbilled				
01/23/2024	FST	First Legal Network - Filing - Joint Stipualation to Continue IN# 30267292	$65.20		Unbilled				
01/30/2024	FST	First Legal Network - Filing - Notice regarding Continuance of Case, Joint SC Report IN# 30275374	$180.94		Unbilled				
09/26/2024	LDS	Legal Document Server - E-Filing - Stip and Order Received IN# 10385519	$35.20		Unbilled				
10/17/2024	LDS	Legal Document Server- E-Filing - Request File Re IN# 10525612	$9.95		Unbilled				
11/21/2024	LDS	Legal Document Server - E-Filing - Proof of Service IN# 10712794	$30.25		Unbilled				
11/21/2024	LDS	Legal Document Server - E-Filing - Request Filed IN# 10710206	$50.25		Unbilled				
12/06/2024	LDS	Legal Document Server - Joint Stip for Leave to File Proposed Amended complaint, Proposed Order IN# 10897945	$195.00		Unbilled				
12/17/2024	LDS	Legal Document Server - E-Filing - Stip and Order IN# 10857414	$50.25		Unbilled				
		Total:	$2,827.50	$0.00					
		Balance:	$2,827.50						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee

Total Fees Billed- - - - - - - - - - - - - - - - - - - -	**$0.00**
Total Fees Unbilled : - - - - - - - - - - - - - - - - -	**$0.00**
Total Fees Received : - - - - - - - - - - - - - - - - -	**$0.00**
Total Soft Cost Billed : - - - - - - - - - - - - - - -	**$0.00**
Total Soft Cost Unbilled : - - - - - - - - - - - -	**$0.00**
Total Soft Cost Received : - - - - - - - - - - - -	**$0.00**
Total Hard Cost Billed : - - - - - - - - - - - - - -	**$0.00**
Total Hard Cost Unbilled : - - - - - - - - - - - -	**$2,827.50**
Total Hard Cost Received : - - - - - - - - - - - -	**$0.00**
Total Taxes Billed : - - - - - - - - - - - - - - - - - -	**$0.00**
Total Taxes Unbilled : - - - - - - - - - - - - - - - -	**$0.00**
Total Taxes Received : - - - - - - - - - - - - - - - -	**$0.00**
Total Late Charges Billed : - - - - - - - - - -	**$0.00**
Total Late Charges Unbilled: - - - - - - - - -	**$0.00**
Total Late Charges Received : - - - - - - - - -	**$0.00**
Trust Balance: -	**$0.00**

EXHIBIT A

COLLECTIVE BARGAINING AGREEMENT

FOR PREMISES

335 WEST CAROB STREET

COMPTON, CALIFORNIA 90220

AND

10268 ALMOND AVENUE

FONTANA, CALIFORNIA 92335

AND

400 HARLEY KNOX BLVD.

PERRIS, CALIFORNIA 92571

AND

3450 PALM AVENUE

SAN BERARDINO, CALIFORNIA 92407

BETWEEN

NATIONAL RETAIL TRANSPORTATION, INC.

AND

UAW LOCAL 509

6508 SOUTH ROSEMEAD BLVD.,

PICO RIVERA, CALIFORNIA 90660

ARTICLE 1

It is the intent and purpose of the EMPLOYER and UNION to promote and maintain industrial stability and harmony and to set forth in this Agreement the wages, hours and working conditions for all the EMPOYER'S EMPLOYEES, excepting its supervisors, guards, watchmen and office help as defined in the Act, as amended, (hereinafter referred to as "EMPLOYEE(S)"). The provisions of this Agreement shall apply to all accretions to this bargaining unit at the locations set forth in Article 2.01.

NATIONAL RETAIL TRANSPORTATION, INC., its affiliates, and/or its trade names, and/or divisions, and/or subsidiaries (hereinafter referred to as the "EMPLOYER") maintains its principal place of business at 220 West Manville Street, Compton, California 90220 and UAW Local 509 located at 6508 South Rosemead Blvd., Pico Rivera, California 90660 (hereinafter referred to as the "UNION") agree to be bound by the terms and conditions of this Agreement.

All references throughout this document made to Employee(s) shall include general neutral terms "they" and "their" which are intended to and shall be interpreted to be inclusive of pronouns for male, female, transgender, and gender non-conforming individuals, and shall include the pronouns he, she and they, or his/him, her and their, respectively.

ARTICLE 2

UNION Recognition

2.01 The EMPLOYER recognizes the UNION as the sole and exclusive bargaining representative of all its EMPLOYEES (with exception as stated in Article 1) of the EMPLOYER, solely at its Fontana, Compton, Perris and San Bernadino, California locations, and the EMPLOYER hereby agrees not to enter into any agreement or contract with said EMPLOYEES, individually or collectively, that conflicts with the terms and provisions of this agreement.

2.02 Supervisory and non-unit personnel of the EMPLOYER shall not perform work that is recognized as the work of the employees except in cases of emergency.

2.03 All present EMPLOYEES who are members of the UNION on the effective date of this AGREEMENT shall remain members of the UNION in good standing as a condition of employment.

2.04 All present EMPLOYEES who are not members of the UNION and all EMPLOYEES hired hereafter shall become and remain members in good standing of the UNION as a condition of employment not later than the thirtieth (30th) day following the date of execution of this Agreement or at the end of their probationary periods (as hereinafter defined), whichever is later. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act but not retroactively.

2.05 The EMPLOYER shall notify the UNION when new EMPLOYEES arc hired, The UNION shall have the right to send applicants for the job and the EMPLOYER agrees to give the same consideration to UNION-sent applicants as given to applicants from other sources. The EMPLOYER reserves the final right to pass on the qualifications and experience of all applicants for employment.

2.06 During the probationary period, the EMPLOYEE may be discharged for any reason without further recourse; provided, that the EMPLOYER may not discharge or discipline for the purposes of evading this Agreement or discriminating against UNION members. After the probationary period, the EMPLOYEE shall be placed on the regular seniority list. In case of discipline during the probationary period the EMPLOYER may take any disciplinary action it determines.

2.07 The EMPLOYER shall immediately upon employment notify the shop steward, or the UNION if there is no shop steward, of the employment of any EMPLOYEE who, under this Agreement, is required to be a member of the UNION as provided in this Article 2. Any EMPLOYEE who, within the time limits provided in this Agreement, shall have failed to tender the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership, shall be discharged by the EMPLOYER within seven (7) days after receipt of written notice from the UNION, provided said EMPLOYEE has not made the requisite payment or payments within said period.

2.08 New members will be afforded a New Hire Orientation to be conducted by the elected Union bargaining committee no later than two (2) weeks after they complete their probationary period.

ARTICLE 3

Seniority

3.01 The EMPLOYER recognizes the general principle that senior EMPLOYEES shall have the preference to work. All things being reasonably equal, the principle of seniority on layoffs and rehiring shall be applied.

3.02 After completion of a ninety (90) day probationary period, an EMPLOYEE shall be placed on the seniority list as of his first day of hire. Notwithstanding the foregoing, during seasonal peak period, the EMPLOYER may employ seasonal EMPLOYEES for a period of thirteen (13) weeks, who shall be subject to all the provisions of this Agreement. If a seasonal EMPLOYEE is retained beyond thirteen (13) weeks, his seniority shall be as of the date such EMPLOYEE was originally hired. The EMPLOYER shall inform both the UNION and the EMPLOYEES when first hired and maintain a separate list of said EMPLOYEES. Seasonal EMPLOYEES shall not be hired while regular EMPLOYEES are on layoff.

3.03 The EMPLOYER shall submit appropriate seniority lists to the UNION each month.

3.04 For the purposes of benefits that are based on seniority, the first date of hire of any EMPLOYEE shall be considered his starting date.

3.05 In the event that EMPLOYER merges, acquires, purchases or leases other operations or part thereof in the State of California, the EMPLOYEES shall maintain their overall seniority from the first date of hire with the original EMPLOYER for the purposes of fringe benefits.

3.06 To the extent that he is capable of doing the available job, each member of the Shop Committee shall head the seniority list on a plant-wide basis. Each acting Shop Committee-person shall head the seniority list of his shift. At the close of his termination of office, he shall be returned to his regular position on the seniority list. The foregoing shall not be construed to apply to vacations or any other benefits except those realized in the increase or decrease of personnel.

3.07 EMPLOYEES shall lose their seniority and have their employment terminated because of:

a. Discharge
b. Resignation
c. Failure to respond to a notice of recall, without just cause
d. Unauthorized leave of absence
e. Unauthorized failure to report for work for four (4) consecutive days when work is available
f. Refusal to do an assigned "task"
g. EMPLOYEE who has been laid off in excess of eighteen (18) months
h. Unauthorized extension of vacation (EMPLOYER will make every effort to accommodate a request for an extension of vacation)
i. Any EMPLOYEE who is absent because of proven illness or injury shall maintain his seniority for a period of two (2) years, after which he shall be deemed to have resigned unless he shall have obtained a leave of absence from the EMPLOYER

3.08 Any EMPLOYEE who is absent because of injury or job-related injury will, upon their return, return with the full seniority they had when the injury occurred. EMPLOYEE must be able to perform the same work and must have a doctor's release. This injury/disability leave cannot extend beyond a period of three (3) years. If the EMPLOYEE upon returning cannot perform his previous work, consideration will be given by the EMPLOYER for a change of classification or new job description at the appropriate rate of pay.

3.09 No Fund contributions shall be made on behalf of the EMPLOYEE by the EMPLOYER during this injury/disability period except as otherwise stipulated in the Agreement. Seniority shall accrue during this leave period for the purpose of layoffs only.

3.10 The EMPLOYER shall post, for a period of not less than five (5) working days, any positions for promotion within the bargaining unit and shall give due consideration to any EMPLOYEE applicants for such position. The determination of applicants' qualifications shall be within the sole discretion of the EMPLOYER but shall not be capricious or arbitrary. Such promoted EMPLOYEES shall immediately receive the appropriate higher rate of pay and shall be subject to a new ninety (90) day probationary period in the new position. If, at the EMPLOYER'S discretion, the EMPLOYEE does not successfully complete the probationary period, he will be returned to his former position at his former rate of pay with no loss in seniority.

3.11 The EMPLOYER agrees to give one (1) week notice on all shift changes to all affected EMPLOYEES.

3.12 Within reason, the EMPLOYER will make every effort to accommodate EMPLOYEES with shift change by classification seniority.

3.13 For each operation governed by this Agreement, UNION employees shall be given preference to work over temporary workers.

3.14 In the case of a reduction in force, EMPLOYEES will be laid off in order of seniority by classification. Provided the bargaining unit EMPLOYEES can perform the necessary work, prior to any seniority bargaining unit EMPLOYEE being reduced, the EMPLOYER will first lay off all temporary and/or part-time EMPLOYEES. Bargaining unit EMPLOYEES will retain their current rate of pay if reduced into a lower paid classification.

3.15 When two (2) or more seniority EMPLOYEES have the same date of hire, they will appear on the seniority list by alphabetical order by last name, A being higher, Z being low.

ARTICLE 4

Discharge and Suspension

4.01 EMPLOYEES shall not be disciplined or discharged except for just cause. Except for the grounds hereinafter set forth, EMPLOYEES shall not be discharged unless and until the EMPLOYER shall have:

a. Given them at least two (2) prior separate written warnings of the specific conduct for which the discharge is proposed,
b. Given notice to the shop steward, the subject EMPLOYEE and the UNION within five (5) days, copies of said notices simultaneously with the delivery of the original warning to the subject EMPLOYEE and
c. Thereafter suspended or imposed some form of discipline, other than discharge, on such EMPLOYEE for the same conduct that occurred after the aforesaid two (2) written warnings. Warning notices must be issued to the Employee within five (5) working days of the knowledge of occurrence by the EMPLOYER.

4.02 EMPLOYEES may be discharged without the two (2) written warnings and interim discipline required by 4.01 hereof only for the following causes:

a. Gross negligence resulting in damage to equipment; proven short tally of goods and/or merchandise
b. Insubordination
c. Proven theft of money, goods or merchandise from EMPLOYER'S premises
d. Proven drunkenness or proof of being under the influence of liquor or drugs during working hours; or use of drugs or liquor on EMPLOYER'S premises
e. Calling an unauthorized strike or walk-out
f. Assault on EMPLOYER'S representatives, customers, or vendors
g. Proven recklessness resulting in a serious accident while on duty
h. Carrying an unauthorized passenger in cab of truck while on duty
i. Failure to report any accident that the driver has knowledge of with an EMPLOYER vehicle and/or failure to follow EMPLOYER procedures (including taking pictures) in reference to the accident
j. Drivers upon being convicted of the fourth (4th) moving violation (personal or commercial) during any consecutive thirty-six (36) month period.
k. Any other justifiable reason subject to the grievance procedure.
l. Falsification of drivers log (electronic or paper)
m. Tampering with on-board computers

The EMPLOYER shall notify the UNION immediately upon discharge of any EMPLOYEE for the reasons set forth in this Section 4.02,

4.03 No disciplinary notice may be introduced in any grievance or arbitration hearing which has not been issued within one (1) year from the date of the disciplinary notice, except in the case of notices concerning accidents. Failure of an EMPLOYEE or UNION to grieve or protest a warning letter to which no other discipline has been attached, when given, shall in no matter be deemed prejudicial to said EMPLOYEE in a future grievance or arbitration hearing involving said warning letter.

4.04 All derogatory material, e.g. warning notices, shall be removed from an EMPLOYEE'S personnel file for all purposes after one (1) year.

4.05 An EMPLOYEE shall not be suspended (except for causes listed in Section 4.02 of this Article 4) until the UNION has been notified with a forty-eight (48) hour period. Such notice must be written. Saturdays, Sundays and holidays shall be excluded in determining the forty-eight (48) hour period.

4.06 EMPLOYER agrees to do his best to resolve issues involving suspension or termination within a five (5) working day period. At the commencement of this period, the UNION may file for arbitration. A determination will be made by the UNION prior to the date of arbitration based on evidence submitted by EMPLOYER and witnesses, if any, as to whether or not the termination or suspension was justified and will proceed accordingly.

4.07 Notice of appeal from discharge or suspension must be made to the EMPLOYER by the UNION within five (5) working days from the date of written notice to the

UNION of the discharge or suspension. If the EMPLOYER and UNION are unable to agree as to a settlement of the date, then it may be appealed to the grievance machinery set forth herein.

4.08 The first (1^{st}) step of the grievance procedure for drivers shall be handled by the Department manager with the Company representative, the second (2^{nd}) step by the supervisor and Company representative and the third (3^{rd}) step by the appointed EMPLOYER representative.

4.09 The first (1^{st}) step of the grievance procedure for all non-drivers, switchers included, shall be handled by the terminal manager with Company representative, the second (2^{nd}) step by the supervisor or the terminal manager and Company representative and the third (3^{rd}) step by the appointed EMPLOYER representative.

ARTICLE 5
Check-Off

5.01 The EMPLOYER shall furnish the UNION with a list of EMPLOYEES who have signed check-off authorization cards. The EMPLOYER shall deduct from the wages of said EMPLOYEES the dues, initiation fees and/or uniform assessments of the UNION. No deductions shall be made that are prohibited by applicable law.

5.02 After proper authorization by the EMPLOYEE to deduct dues, initiation fees and/or uniform assessments of the UNION, the EMPLOYER shall forward the total amount deducted to the UNION before the start of the next calendar month. Deductions for any calendar month shall be remitted to the Financial Secretary of Local 509 of the UAW.

5.03 When an EMPLOYEE who is on check-off is not on the payroll during the week in which the EMPLOYER makes the aforementioned deduction or has no earning or insufficient earnings during that week or is on leave of absence, the EMPLOYEE shall have the responsibility of making that month's payment of dues and/or uniform assessments directly to the UNION; the EMPLOYER shall have the responsibility to take the month's payment of dues, initiation fees and/or uniform assessments out of the first week the EMPLOYEE earns in excess of said deduction for that month.

5.04 The EMPLOYER agrees that, during the life of this Agreement, it will deduct from the pay of each EMPLOYEE voluntary contributions to UAW V-CAP for each EMPLOYEE who executes, or has executed, in writing to the EMPLOYER, an authorization of such V-CAP Check-off on forms provided by the UNION.

ARTICLE 6

Leave of Absence

6.01 Any EMPLOYEE desiring leave of absence from his employment shall secure written permission from the EMPLOYER. The maximum leave of absence shall be for thirty (30) days and may be extended for like periods. Written permission for extension shall be secured from the EMPLOYER. During the period of absence, the EMPLOYEE shall not engage in gainful employment in the same industry in classifications covered by this Agreement. Failure to comply with this provision shall result in the complete loss of seniority rights for the EMPLOYEES involved.

6.02 The EMPLOYEE shall make the necessary arrangements to maintain his good standing position with the UNION.

6.03 EMPLOYEE/UNION requested leave of absence - an EMPLOYEE on leave of absence shall maintain full company seniority but must report back to work at the EMPLOYER within and not to exceed ninety (90) days. While on this special leave of absence, the EMPLOYEE cannot work for any other EMPLOYER with the exception of the UNION. Extension of this leave of absence must be approved by the EMPLOYER and the EMPLOYER shall not be obligated to make contributions on behalf of such EMPLOYEE during the period of this leave of absence or extensions thereof.

6.04 An EMPLOYEE selected for a full time UNION position or selected or elected to full time public office which takes him/her from his employment with the EMPLOYER shall upon request receive a leave of absence without pay for their term of office or appointment. Upon his/her return to the EMPLOYER, he/she shall be reinstated to his/her former job at work generally similar to that in which he/she was engaged immediately prior to his/her leave of absence at his/her former base rate of pay, subject to any increases given during his/her absence. His/her seniority shall accumulate during the period of his/her leave of absence. Any EMPLOYEE benefits applicable during such leave shall be coordinated with any benefits during such leave.

6.05 The Company agrees to abide by all applicable laws, including the FMLA and CFRA (California Family Rights Act) and the Family School Partnership Act.

ARTICLE 7

Successors and Assigns

7.01 If the EMPLOYER merges, acquires or purchases control of the business of another EMPLOYER in the State of California, the EMPLOYEES within the classifications covered by this Agreement of the EMPLOYER so acquired or purchased shall be placed at the bottom of the EMPLOYER'S seniority roster in the order of their seniority with the former EMPLOYER.

7.02 This Agreement shall be binding upon the parties hereto, their successors, administrators, executors and assigns. If an entire operation or any part thereof is sold, leased, transferred or taken over by sale, transfer, lease assignment, receivership or bankruptcy proceeding, the operation shall continue to be subject to the terms and conditions of this Agreement for the life thereof. It is understood by this Section that the parties hereto shall not use any leasing devise to a third party to evade this Agreement. The EMPLOYER shall give notice to the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc. of the operation covered by the Agreement or any part thereof. The notice will be in writing with a copy to the UNION not later than thirty (30) days prior to sale. In the event the EMPLOYER fails to require the purchaser, transferee or lessee to assume the obligations of this Agreement, the EMPLOYER shall be liable to the UNION and to the EMPLOYEES covered for all damages sustained as a result of such failure to require assumption of the terms of this Agreement but shall not be liable after the purchaser, the transferee or the lessee has agreed to assume the obligations of this Agreement.

7.03 The EMPLOYER shall not operate, maintain or conduct any establishment or place of business for the purpose of evading the terms of this Agreement.

As it applies to the EMPLOYER'S use of owner-operators, the EMPLOYER will advise its management staff and dispatchers that they are not permitted to accept any gifts or gratuities from any owner-operator for the purpose of granting preferential treatment to any such owner-operator.

7.04 In any case, whether it is a purchase, merger, consolidation, acquisition, etc., the EMPLOYEES involved shall retain their overall seniority for all fringe benefits.

ARTICLE 8

Employer Premises

8.01 An authorized representative of the UNION shall have access to the EMPLOYER'S establishment during working hours for the purpose of adjusting grievances, investigating working conditions and ascertaining that the Agreement is being followed. For safety purposes said authorized UNION representative must notify the EMPLOYER when they arrive at the Company location.

8.02 The UNION may post notices on the UNION bulletin board which the EMPLOYER shall provide at each terminal, barn or location.

8.03 The EMPLOYER shall provide the Bargaining Committee with a file cabinet, with locks, at the Compton, Via Munde, Perris and Fontana locations for the purpose of maintaining grievances and files. The EMPLOYER shall not be responsible for the safety of the cabinets or its contents.

ARTICLE 9
Shop Committee

9.01 The EMPLOYER recognizes the right of the UNION to designate or remove a shop committee (no more than three (3) persons) and/or alternates who shall be selected by the UNION from the EMPLOYER'S seniority list. One UNION steward shall be for the Swing Shift only. The authority of the shop committee and/or alternates so designated by the UNION shall be limited to and shall not exceed the following duties and activities:

a. The investigation and presentation of grievances with EMPLOYER or the designated EMPLOYER representative in accordance with the provisions of this Agreement
b. The collection of dues when authorized by appropriate UNION action
c. The transmission of such messages and information which shall originate with and be authorized by the UNION or its Officers provided such messages and information:
    1. Have been reduced to writing or
    2. If not reduced to writing, are of a routine nature and do not involve work
d. stoppages, slowdowns, refusal to handle goods or any other interference with
e. the EMPLOYER'S business

9.02 A shop committee and/or alternate has no authority to take strike action or any other action interrupting the EMPLOYER'S business, except as authorized by official action of the UNION. Its members shall have super-seniority for all layoffs or recall provided they can perform the duties required.

9.03 The EMPLOYER recognizes these limitations upon the authority of the shop committee and/or alternate and shall not hold the UNION liable for any unauthorized acts. The EMPLOYER in so recognizing such limitations shall have the authority to impose proper discipline, including discharge, in the event the shop committee has taken unauthorized strike action, slowdown or work stoppage in violation of this Agreement.

9.04 Provided that it will not unreasonably interfere with the performance of their regular employment duties, the shop committee shall be permitted reasonable time to investigate, present and process grievances on the EMPLOYER'S property without loss of time or pay during their regular working hours; and where mutually agreed to by the UNION and the EMPLOYER off the property or other than during their regular schedule without loss of time or pay. Such time spent in handling grievances during the shop committee members' regular working hours shall be considered working hours in computing daily and/or weekly overtime,

9.05 The UNION shall designate one (1) person on the shop committee to be the chief shop committee person who shall supersede the other two (2) committee persons.

9.06 Time spent on EMPLOYER approved union business shall be considered working hours in computing daily and/or weekly overtime.

ARTICLE 10
Wage calculation and Payment

10.01 A time clock or other satisfactory system will be provided for EMPLOYEES to record their starting and quitting time and such other breaks as the EMPLOYER shall wish to record.

10.02 Payroll checks shall have appended data showing regular and overtime earnings and deductions for social security, city, state and federal income tax withholding, UNION dues any miscellaneous deductions, as well as all remaining vacation, sick, personal days and all safety bonuses paid out.

10.03 Payroll records shall reflect normal and overtime hours worked, wages paid and holidays worked or not worked.

10.04 EMPLOYEES paid by check shall receive their checks no later than the first break time on their payday. EMPLOYEES not present during check pass out shall have their checks held for a period not to exceed one (1) week by the person who distributes the checks in the normal course of business. After one (1) week, paychecks shall be returned to the payroll department.

10.05 In all cases, all EMPLOYEES will be paid and all pay days will be in accordance with all governing California statutes, laws and regulations.

10.06 When a regular payday occurs on a holiday, the EMPLOYER shall pay the EMPLOYEES on a regular workday immediately preceding the holiday.

ARTICLE 11
Federal and State Laws

11.01 EMPLOYER shall protect EMPLOYEES with workmen's compensation insurance, social security, disability and unemployment insurance, as required by Federal and State laws.

11.02 When a regular EMPLOYEE is injured on a job, he shall be guaranteed eight (8) hours pay for the day injured, provided he is instructed to cease work as a result of an injury by the EMPLOYER or his physician. If EMPLOYEE is required to visit hospitals, clinics, doctors' offices or other places for treatment or diagnosis during working hours, he shall be paid for the time involved in travel and treatment with a guarantee of eight (8) hours.

11.03 EMPLOYEES enlisting or entering the military service of the United States, pursuant to the provisions of the Selective Service Act of 1948, shall be granted all rights and privileges provided by the Act.

11.04 The EMPLOYER shall pay the Health and Insurance contributions for EMPLOYEES on leave of absence for training in the military reserves or National Guard, in compliance with the applicable Federal or State law.

ARTICLE 12

Picket Line and Struck Goods

12.01 It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action in the event an EMPLOYEE refuses to enter upon any property involved in a primary labor dispute or refuses to go through or work behind any primary picket line, including the primary picket line of other UNION(S), including picket lines at the EMPLOYER'S place of business.

ARTICLE 13

Company Rules

13.01 The EMPLOYER may establish rules, provided that such rules are not in conflict with the terms and provisions of this Agreement and further provided that no such rules shall become effective without written approval of the UNION. Failure of the UNION to notify the EMPLOYER of approval within five (5) days after the EMPLOYER shall have given the UNION notice of such rules shall allow the rules to take effect subject to the outcome of any grievance the UNION files pursuant to the terms of this agreement.

13.02 The EMPLOYER will provide each non-probationary EMPLOYEE with a Company-logoed vest. The EMPLOYER will replace the Company-logoed vests as needed, but not more frequently than once a year.

13.03 If the EMPLOYER issues Identification Badges, they must be worn as a condition of employment.

13.04 It is the driver's responsibility to deliver his trailer to the correct location. Failure to do so will be treated as follows:

a. 1st offense - 1 day suspension
b. 2nd offense – termination

ARTICLE 14

Arbitration

14.01 Should any grievance arise concerning the application or interpretation of any provision of this Agreement including, but not limited to, a dispute concerning a matter of health and/or retirement contributions, discharge, voluntary or involuntary quit, the representatives of the EMPLOYER and the representatives of the UNION shall attempt to adjust the grievances between themselves. If they are unable to reach settlement, the grievance may, within five (5) working days after the request of either party, be submitted for final and binding arbitration on a rotating basis between the Federal Mediation and Conciliation Service or the American Arbitration Association. The cost of such arbitrations shall be borne equally by both parties.

14.02 The Arbitrator shall not be empowered to add to or subtract from this Agreement in any way. The Arbitrator may, in cases involving disciplinary action including discharge, sustain or overrule any discharge or suspension or disciplinary action as he may deem just and equitable and make such award(s) as he may deem appropriate.

14.03 In the event of the failure of either party to be present at the time and place designated for the arbitration then the Arbitrator shall have the right to listen to the party appearing at the time and place for arbitration and shall have the power to render a decision based on the testimony before him. The decision of the Arbitrator shall be final and binding upon both parties hereto and may be entered as a final decree of judgment.

14.04 All grievances must be submitted to the aggrieved EMPLOYEE'S shop steward within ten (10) calendar days of the occurrence.

ARTICLE 15

Non-Discrimination

15.01 There shall be no discrimination against any EMPLOYEE by either the EMPLOYER or the UNION because of race, color, sex (including pregnancy, childbirth, breastfeeding and/or medical conditions related to pregnancy, childbirth, or breastfeeding), gender, religious creed (including religious dress and grooming practices), marital status, domestic partner status, age, national origin or ancestry, natural hairstyles, physical or mental disability, medical condition, genetic information and characteristics, sexual orientation, gender identity or expression, military or veteran status, or any other basis protected under federal, state or local laws.

ARTICLE 16

Management Rights

16.01 Nothing in this Agreement is intended, nor shall it be construed as, denying or in any manner limiting the right of the EMPLOYER to control and supervise all operations and direct all working forces, including the right to select and hire, layoff or transfer EMPLOYEES or to control and regulate the use of all equipment and other property of the EMPLOYER, to maintain discipline among EMPLOYEES and to promote efficiency in the operation provided, however, that the provisions of this Article are not used by the EMPLOYER for the purpose of discriminating against the UNION or any of its members.

ARTICLE 17

Strike and Lockout

17.01 There shall be no strike by the UNION or any of its members during the term of this Agreement. Should the EMPLOYEES cause a stoppage of work for any reason, notice thereof shall be given to the UNION. The latter obligates itself to endeavor in good faith to bring about the return to work of the striking EMPLOYEES or those who have stopped work immediately after receipt by the UNION of such notice. Upon failure of any such EMPLOYEES to return to work within twenty-four (24) hours, the EMPLOYER may, at its option, consider that such workers have abandoned their employment. Should the EMPLOYER re-employ such EMPLOYEES, it shall treat all such EMPLOYEES alike and shall not discriminate among them. Compliance by the UNION in good faith with this provision shall be deemed full compliance with the UNION'S obligation hereunder.

a. There shall be no lockout of workers by the EMPLOYER.

Should the EMPLOYER cause a lockout of his workers, notice thereof shall be given to the UNION.

17.02 The EMPLOYER obligates itself to endeavor in good faith immediately after receipt of such notice to bring about a termination of the lockout.

17.03 The UNION agrees that there will be no strikes, work stoppages or slowdowns and the EMPLOYER agrees that there will be no lockouts.

ARTICLE 18

Insurance

18.01 The EMPLOYER agrees to continue the medical benefits with the EMPLOYEES maintaining the same percentage (%) of contribution to the total premium that was in effect on the effective date of this Agreement. All EMPLOYEES shall have contributions made on their behalf after the first (1^{st}) of the month immediately following the sixtieth (60^{th}) consecutive day of employment.

18.02 The failure of the EMPLOYER to make such timely contributions shall subject said EMPLOYER to any action by the UNION, including strike action, regardless of any prohibition contained herein. If a legal proceeding is instituted to collect delinquent contributions, the prevailing party in said proceeding shall be entitled to recover any legal costs, including attorney's fees and/or arbitration fees, that may be incurred.

18.03 EMPLOYEES out on disability, compensation or proven illness will be covered by the health insurance program for up to three (3) months with the EMPLOYER making its share of the contributions during this period. The EMPLOYER shall submit said monthly contribution(s) no later than the tenth (10^{th}) day of the following month.

ARTICLE 19
Vacations

19.01 All EMPLOYEES who shall have been on the payroll of the EMPLOYER for a period of six (6) months shall be entitled to receive, retroactive to the first month of employment, one day's paid vacation for each two (2) months of employment up to a maximum of five (5) working days,

19.02 All EMPLOYEES who shall have two (2) years seniority but no more than five (5) years, shall receive two (2) weeks (ten (10) days) paid vacation at their then hourly rate.

19.03 All EMPLOYEES who shall have five (5) years of seniority, but no more than ten (10) years, shall receive three (3) weeks (fifteen (15) days) paid vacation at their then hourly rate.

19.04 All EMPLOYEES who have more than ten (10) years of seniority shall receive four (4) weeks (twenty (20) days) paid vacation at their hourly rate.

19.05 The pay for vacation shall be paid in advance at the rate of pay prevailing when the vacation is taken.

19.06 If holidays fall during the vacation period, the EMPLOYEE shall receive an extra day's vacation with pay or an additional day's pay for such holiday.

19.07 Any EMPLOYEE may work his vacation, subject to the approval by the EMPLOYER when there is a shortage of manpower, at which time he will move to the bottom of the seniority list for the duration of his vacation period.

19.08 Any EMPLOYEE may split his vacation subject to the EMPLOYER'S approval.

19.09 Accrued vacation pay shall be paid within two (2) weeks to all EMPLOYEES who quit or are discharged, to be paid at the rate the EMPLOYEE is earning as of the date of termination.

19.10 In case of death of an EMPLOYEE, the vacation pay due the EMPLOYEE shall be paid to the EMPLOYEE'S estate within two (2) weeks after legal proof of death.

19.11 The EMPLOYER shall make available vacation choices from the first week in January through January 31^{st} of each year. If an EMPLOYEE fails to indicate his/her choice by January 31^{st} of that year they will forfeit their seniority for the choice of vacation. For all persons who do not indicate their choices by January 31^{st} vacations will be given on a first come, first served basis. The Company will notify EMPLOYEES of approved vacation time no later than February 15^{th}. No EMPLOYEE is guaranteed he/she will receive the requested vacation dates. The first two (2) weeks will be done first on a seniority preference basis and second on availability.

a. All remaining vacation dates must be submitted with two (2) weeks' notice of the requested dates of vacation and shall be subject to staffing needs. The EMPLOYER will notify the EMPLOYEE in writing within a five (5) working day period whether the EMPLOYEE'S vacation request was approved or disapproved. Should the EMPLOYER fail to respond within the five (5) working day period, the vacation request will be deemed automatically granted.
b. Conflicts arising from such selection shall be settled on the basis of seniority in that classification.
c. The number of EMPLOYEES who shall select the same period for vacation shall not unreasonably interfere with the operations of the EMPLOYER. Any differences regarding the application of this provision shall be subject to the mutual agreement of the EMPLOYER and UNION and the grievance and arbitration provisions of this Agreement.

19.12 Vacation entitlement will be based on date of hire.

19.13 Unused vacation shall not be rolled over; it will be paid out at the end of the EMPLOYEES' vacation year. All unused vacation already banked will be paid out at the EMPLOYEE'S current rate of pay.

ARTICLE 20

Paid Holidays/Sick Leave

20.01 All EMPLOYEES, as classified below, shall enjoy the following ten (10) holidays per contract year:

a. New Year's Day
b. Martin Luther King's Birthday
c. Good Friday
d. Memorial Day
e. Independence Day
f. Labor Day
g. Thanksgiving Day
h. New Year's Eve
i. Christmas Day
j. EMPLOYEES Birthday

Each terminal, work site or division may have their respective representative together with the EMPLOYER'S representative agree to substitute any holiday or holidays for those listed. Such procedure shall take place at the commencement, or as close to the commencement as practical, of each year.

20.02 An EMPLOYEE, in order to qualify for the above paid holidays, must be employed by the EMPLOYER for at least thirty (30) calendar days and must be on the active payroll of the EMPLOYER the day before and the day after the above numerated holidays. If an EMPLOYEE is required to work (except over-the-road drivers) on any paid holiday, he shall receive his regular day's pay in addition to time and one-half (1 ½) his regular hourly rate of pay.

If a holiday falls on either a Saturday or Sunday it shall be observed either the Friday immediately preceding or the Monday immediately following.

If any EMPLOYEE is laid off the day before or the day after a holiday, he shall be entitled to holiday pay.

20.03 Holiday work shall be offered to drivers on a seniority basis. If not enough drivers volunteer, the EMPLOYER reserves the right to fill the necessary slots in inverse order of seniority, example: "Ask the top - force the bottom."

20.04 In the event there is a conflict between Federal and State as to the date that the above listed holiday is to be observed, the Federal designated holiday shall be the one observed by the EMPLOYER. However, if the industry practice is in conflict with this, the EMPLOYER shall notify the UNION at least five (5) days in advance and they shall mutually agree as to the date which shall be observed as paid holiday hereunder. The EMPLOYER shall not cease operations without prior agreement of the UNION due to any conflict arising from the holidays listed above.

20.05 All non-probationary EMPLOYEES shall be entitled to receive one (1) paid personal day per contract year during the life of this Agreement. The EMPLOYER reserves the right to approve the dates of the requested paid personal days, which approval shall not be unreasonably withheld. EMPLOYEE must give five (5) working days' notice of his request to take a personal day. The EMPLOYER will give two (2) working days' notice to the EMPLOYEE as to his request for paid personal days. Notice will be given to EMPLOYEES in written form. Anytime a NATIONAL RETAIL TRANSPORTATION, INC. entity shuts down for any reason where EMPLOYEE'S may lose a day's pay, the EMPLOYEES may use their personal days so as not to lose a day's pay.

20.06 All EMPLOYEES shall receive three (3) paid sick leave days in accordance with State Law. EMPLOYEES will receive an additional paid sick leave day [for a total of four (4)] after 2 years of service.

Time taken in accordance with the aforementioned eligibility or unused sick leave shall be paid on the basis of the then hourly rate.

All unused paid sick leave days shall be paid by separate check each year within the next two (2) weeks following the EMPLOYEE'S anniversary date of hire.

ARTICLE 21

Work Protection

21.01 Notwithstanding anything to the contrary contained in this Agreement, including the no-strike clause, if the EMPLOYER should fail to comply fully with an Award of an Arbitrator hereunder within five (5) calendar days of its issuance, the UNION, upon twenty-four (24) hours notice, may engage in a strike or such other economic action until the EMPLOYER fully complies with the subject Award.

ARTICLE 22

Hours of Work

22.01 Probationary Period - The probationary period for new EMPLOYEES shall be ninety (90) days. The EMPLOYER can discharge any such probationary EMPLOYEE without the EMPLOYEE having recourse to the grievance and arbitration procedure herein stated. If circumstances warrant additional time, the parties may mutually agree to extend an additional thirty (30) days.

22.02 Such probationary period shall be extended for those EMPLOYEES who require bonding by the U.S. Customs Department. Such probationary period shall be extended until the EMPLOYEE is cleared for such bonding, but in no event shall the probationary period be less than ninety (90) days.

22.03 A week's work shall consist of forty (40) hours during the five (5) days of the week, exclusive of one-half (1/2) hour for lunch. The starting time shall be announced by the EMPLOYER at the EMPLOYEE'S time of hire. In the event the EMPLOYER chooses to change the EMPLOYEE'S time, it may do so.

22.03 (a) Notwithstanding anything to the contrary herein, the parties hereto will abide by the "alternative work week" Memorandum of Understanding attached hereto as Exhibit "A" for the term of this Agreement and said Memorandum shall cover all unit EMPLOYEES working at the EMPLOYER'S Fontana, CA location, including Switchers.

22.03 (b) Anyone working on an alternative work week schedule will be compensated for all sick days, personal days, holidays and vacation days with the same compensation they would have received with their current scheduled work week.

22.04 Time and one-half (1 $^{1/2}$) shall be paid for all hours worked in excess of forty (40) hours in any one (1) week or in excess of eight (8) hours in any one (1) day. Time and one-half (1 ½) shall be paid for all hours worked on the sixth (6^{th}) day up to twelve (12) hours per day and double time for all hours worked in excess of twelve (12) hours per day. Time and one-half (1 ½) shall be paid for all hours worked on the seventh (7^{th}) day up to eight (8) hours per day and double time for all hours worked in excess of eight (8) hours per day. Paid holidays and sick days shall be counted for the purpose of computing overtime.

22.05 EMPLOYEES ordered to work any day shall receive at least four (4) hours pay at the applicable rate of pay. If an EMPLOYEE works more than four (4) hours, he shall be guaranteed a full eight (8) hours pay at the applicable rate of pay.

22.06 EMPLOYEES will receive Holiday pay plus time and one-half (1 ½) for 8 hours of work, which will be guaranteed, for a total of two and one-half (2 ½) times the hourly rate of pay for 8 hours. This shall not apply to over-the-road drivers.

22.07 If the EMPLOYER knows in advance what work will be available, every effort will be made to insure that senior workers achieve a full work schedule.

ARTICLE 23

Jury Duty

23.01 All EMPLOYEES who have completed their probationary period who are called for jury duty (other than Grand Jury), shall receive the difference between eight (8) hours pay at the applicable hourly wage and actual payment of jury duty for the substantiated day of jury duty to a maximum of twelve (12) days during the term of this Agreement.

ARTICLE 24

Sanitary Conditions

24.01 The EMPLOYER must provide sanitary conditions for EMPLOYEES covered by this Agreement. The EMPLOYER must furnish toilet facilities in working order and repair such nonfunctioning facilities, hot and cold running water, soap and towels and must keep these facilities clean and operable. The EMPLOYEES agree to help keep these facilities in working order, clean and operable.

24.02 The EMPLOYER shall take reasonable action to provide and maintain operable, heated and sanitary bathroom and lunchroom facilities.

ARTICLE 25

Inspection of Payroll Records

25.01 An authorized representative of the UNION or the respective funds shall have the right to inspect the EMPLOYER'S pay records, time cards, health and insurance fund records and/or other records of the EMPLOYEES including payroll tax reports or canceled checks pertaining to EMPLOYEES.

ARTICLE 26

Posting of Bonds

26.01 The UNION may require the posting of a bond sufficient to cover weekly wages and fringe benefits where the EMPLOYER, by financial shortages, has created a doubt as to future ability of the UNION to collect for the EMPLOYEES those conditions provided by this Agreement.

ARTICLE 27

Court Appearances

27.01 Any EMPLOYEE required appearing in court at the request of the EMPLOYER or at the summons of the National Labor Relations Board, or any State Mediation Board, as a result of some action taken on behalf of the EMPLOYER, shall be paid in full for lost time by the EMPLOYER. No payment shall be less than a full day's pay but the EMPLOYEE shall be available for work if the proceedings do not extend a full day.

ARTICLE 28

Maintenance of Standards

28.01 The EMPLOYER agrees that all conditions of employment relating to wages, hours of work, overtime differentials and general working conditions shall be maintained which are better, higher or more favorable to the EMPLOYER'S EMPLOYEES than those provided for by or under this Agreement; and the EMPLOYER agrees that its EMPLOYEES shall continue to enjoy these better, higher and more favorable practices, standards and/or benefits.

ARTICLE 29

New Branches

29.01 When a new branch office, terminal, division or operation is opened by the EMPLOYER in the State of California (except as a replacement for existing operations or as a new division in a locality where there are existing operations), all EMPLOYEES employed at divisions affected in whole or in part by the opening of a new division shall be offered by EMPLOYER the opportunity to transfer to regular positions in the new division, or operation, in order of their division seniority. This provision is not intended to cover situations where there is a replacement of an existing operation or whereas new division is opened in a locality where there is an existing terminal. In these latter situations, laid-off or extra EMPLOYEES in the existing facilities shall have first opportunity for employment at the new operation in accordance with their seniority. If all regular full-time positions are not filled in this manner, then the provisions of the above shall apply.

29.02 The transferred EMPLOYEES, other than those referred to in the exception above, shall, once having elected to accept an offered transfer, be required to remain at that position for a minimum period of one (1) year. EMPLOYEES who avail themselves of the transfer privilege because they are laid-off at their original terminal may exercise their seniority rights if work becomes available at the original terminal within a six (6) month period.

ARTICLE 30

Closing of Branches

30.01 When a division or operation is closed or partially closed and the work of the division or operation is transferred to another division or operation in whole or in part in the State of California, an EMPLOYEE employed at the closed or partially closed-down division or operation shall have the right to transfer to the division or operation into which the work was transferred and to exercise his seniority on the division or operation.

30.02 When a division or operation closes permanently, an EMPLOYEE shall have the right to transfer, by seniority, to any other location and replace any agency, temporary or seasonal worker and carry along "company" seniority provided that he possesses the qualifications to do the work, Such transfer request shall remain open and in force for a twelve (12) month period commencing from the date of the division or operation closing even if the EMPLOYEE leaves the EMPLOYER for that duration. EMPLOYER shall not be required to make any contributions towards the Funds on behalf of such EMPLOYEE during period EMPLOYEE leaves EMPLOYER.

ARTICLE 31

Worker's Compensation Claims

31.01 The EMPLOYER agrees to cooperate toward the prompt settlement of EMPLOYEE on-the-job injury claims when such claims are due and owing as required by law.

ARTICLE 32

Safety

32.01 The EMPLOYER will give the following quarterly safety bonuses to those commercial drivers who have no chargeable accidents and who have clean CSA inspection records for the entire quarter. The bonuses will be calculated based on a calendar year and in order to receive same, an EMPLOYEE must have been actively working for the entire quarter: .

a. Commercial drivers with one (1) to ten (10) years of service as of January 1st each year - $100.00 per quarter. If said EMPLOYEE earns a bonus for all four (4) quarters, they will receive an additional fifth (5th) bonus of $100.00.
b. Commercial drivers with more than 10 years of service as of January 1st each year - $200.00 per quarter. If said EMPLOYEE earns a bonus for all four (4) quarters, they will receive an additional fifth (5th) bonus of $200.00..
c. Those commercial drivers that earn a fifth bonus payment each year will receive recognition.

The EMPLOYER shall not change or modify this program except upon sixty (60) days written notice to the UNION.

32.02 Driver's Committee and EMPLOYER will conjunctively draw up a "Driver's Check List" indicating driver's and/or EMPLOYER'S responsibility regarding state licenses, permits, pertinent documents, inspection stickers etc. This list will become part and parcel to this Collective Bargaining Agreement and will be added to it as a rider.

32.03 All drivers who have a chargeable accident must take a defensive driving course offered by the EMPLOYER at a time convenient to the EMPLOYER and on unpaid personal time.

32.04 The shop committee shall have a monthly meeting to discuss related issues.

ARTICLE 33
Separation of Employment

33.01 Upon discharge, the EMPLOYER shall immediately pay all money due to the EMPLOYEE. Upon quitting, the EMPLOYER shall pay all money due to the EMPLOYEE on the payday in the week following such quitting.

ARTICLE 34
Wages

34.01 Wage rates of various EMPLOYEES covered by this Agreement are set forth by location in the wage schedule annexed hereto.

34.02 No EMPLOYEES shall receive a decrease in wages as a result of this Agreement.

34.03 Any previous practices, allowances, benefits, etc., more beneficial or not specifically changed by this Agreement shall continue in force as before.

ARTICLE 35

Severability and Savings Clause

35.01 If any Article or Section of this Agreement or of any supplements or riders hereto should be held invalid by operation of law or by a tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement and of any supplements or riders hereto, or the application of such Article or Section to persons or circumstances other than those as to which that has been invalid or as to which compliance with or enforcement of has been restrained shall not be affected thereby.

35.02 In the event that any Article or Section is held invalid or enforcement of or compliance with which has been retrained, as above set forth, the parties affected thereby shall enter into immediate collective bargaining negotiation after receipt of written notice of the desired amendments by either EMPLOYER or UNION for the purpose of arriving at a mutually satisfactory replacement for such Article or Section during the period of invalidity or restraint. There shall be no limitation of time for such written notice. If the parties do not agree on a mutually satisfactory replacement within sixty (60) days after receipt of the then stated written notice, either party shall be permitted all legal or economic recourse in support of its demands notwithstanding any provisions of this Agreement to the contrary.

ARTICLE 36

Paid Bereavement

36.01 Non-probationary EMPLOYEES shall receive paid bereavement leave in the event of death in the EMPLOYEE'S family as follows:

a. Three (3) paid days - parents, spouse, registered domestic partners, child(ren), brother(s), sister(s), step/foster children of legal spouse if living with EMPLOYEE, father-in-law/mother-in-law, grandparents of both the EMPLOYEE and the spouse, and son-in-law/daughter-in-law and grandchildren.

Unpaid funeral leave up to a period of ten (10) days upon request of EMPLOYEE shall not be unreasonably withheld by EMPLOYER.

ARTICLE 37

Labor-Management Advisory Committee

37.01 The parties agree to establish a Labor-Management Advisory Committee which shall provide a forum in which the parties can discuss mutual problems so as to achieve a more harmonious relationship. The Committee shall meet semi-annually and is not intended to replace the contractual grievance procedure or to constitute a collective bargaining session. The committee shall consist of the negotiating committee, a forklift operator and a lead person to be chosen by the UNION.

ARTICLE 38

Expiration of Contract

38.01 This Agreement shall be effective as of October 1, 2021, and shall remain in full force and effect up to and including September 30, 2024, and shall continue from year to year thereafter, unless written notice to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to the expiration.

38.02 Where no such cancellation or termination notice is served, and the parties desire to continue such Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to June 30, 2018, or September 30 of any subsequent contract year advising that such parties desire to revise or change terms or conditions of such Agreement.

38.03 In the event of an inadvertent failure by either party to give notice set forth in 38.01 and 38.02 of this Article, such party may give such notice at any time prior to the termination or automatic renewal date of this Agreement. If a notice is given in accordance with the provisions of this paragraph, the expiration date of this Agreement shall be the sixty-first (61^{st}) day following such notice.

ARTICLE 39

Retirement Plan

39.01 Effective June 30, 2021, the EMPLOYER shall contribute eighty-five ($.85) cents per hour up to a maximum of forty (40) hours in any one (1) week for all EMPLOYEES with one (1) or more years of service to a Retirement Plan to be designated by the EMPLOYER. Effective June 1, 2022, the EMPLOYER'S contribution rate will be one ($1.00) dollar per hour for all eligible EMPLOYEES, up to a maximum of forty (40) hours in any one (1) week period. Effective June 1, 2023, the EMPLOYER'S contribution rate will be one dollar and fifteen cents ($1.15) per hour for all eligible EMPLOYEES, up to a maximum of forty (40) hours in any one (1) week period.

UAW Local 509

By: ____________________

James Banks

Title: Intl. Rep

UAW Local 509 Committee

____________________ Chairman UAW Local 509

Duane Smith

____

Davis Jimenez

____

Erik Romero

NATIONAL RETAIL TRANSPORTATION, INC.

BY ____________________

Jon Hoch

TITLE COO