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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

EUDIER LEAÑO on behalf of himself and all  
others similarly situated,

PLAINTIFFS,

v.

RYDER LAST MILE, INC., a Florida  
Company, and DOES 1-10, inclusive,

DEFENDANTS.

Case No.: 30-2024-01405201-CU-OE-CXC

**REPRESENTATIVE ACTION**  
**COMPLAINT:**

(1) Violation of California Private Attorney  
General Act, ("PAGA"), Labor Code §  
2699, et seq.

Assigned for All Purposes  
Judge Lon F. Hurwitz  
Dept. CX103

1 Plaintiffs EUDIER LEAÑO (“Plaintiff”) on behalf of himself as an “aggrieved employee,”  
2 the people of the State of California, and all other “aggrieved employees,” and as “aggrieved  
3 employees” under the Labor Code Private Attorneys General Act of 2004, §2699, et seq. (“PAGA”)  
4 complaint against RYDER LAST MILE, INC. (“Defendant” or “Ryder”), a corporation, as follows:

### 5 **JURISDICTION & VENUE**

6  
7 1. The Court has subject matter jurisdiction under Article VI, §10 of the California  
8 Constitution and California Code of Civil Procedure §410.10 by virtue that this is a civil action in  
9 which the matter in controversy exceeds \$25,000, and because the cause of action arises under the  
10 laws of the State of California, or is subject to adjudication in the courts of the State of California.

11 2. The Court has personal jurisdiction over Defendant because Defendant has caused  
12 injuries in Orange County and the State of California through its acts, and by its violation of the  
13 California Labor Code.

14 3. At all times, Defendant is and was a Florida corporation doing business in Orange  
15 County and in the State of California with its address at 11669 NW 105 Street, Miami, FL. 33178.

16 4. Venue is proper pursuant to Code of Civil Procedure §395. Defendant operates  
17 within California and does business within Orange County, California. The unlawful acts alleged  
18 herein have a direct effect on Plaintiffs and all “aggrieved employees” within the State of California  
19 and Orange County.

20 5. Plaintiff is a resident and citizen of California.

21 6. Plaintiff and all “aggrieved employees” are employees of Ryder.

22 7. Defendant Ryder is a well-known nationwide logistics company that employed  
23 Plaintiff and the other aggrieved employees as drivers within California. This is not the first time  
24 Ryder has been the sued for violating the California Labor Code. As such, it has both constructive  
25 and actual knowledge that its drivers were not being compensated fairly under California law.

### 26 **GENERAL ALLEGATIONS**

27 8. This is a Representative Action, under Labor Code §2699 et seq., on behalf of the  
28 following individuals:

1 All California drivers who performed work for Ryder from one (1) year prior to the  
2 date of the PAGA notice letter and continuing to the present. (“Aggrieved  
3 Employees”)

4 9. Plaintiffs do not allege any “individual” PAGA claims.

5 10. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce  
6 Development Agency, Defendant has failed to comply with California’s Labor Code by  
7 misclassifying its drivers as independent contractors instead of employees. As such, Ryder has  
8 failed to reimburse its drivers for necessary and reasonable expenses, failure to provide meal and  
9 rest breaks, failed to pay for all hours worked, failed to pay overtime, failed to provide itemized  
10 pay statements, and maintain required wage and time records, and failed to timely pay its drivers  
11 full wages upon termination.

12 11. In September 2019, AB 5 was signed into law to codify the test for determining  
13 whether a worker is properly classified as an independent contractor. The law arose out of *Dynamex*  
14 *Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (2018), a trucking case with analogous facts.  
15 In that case, the California Supreme Court first adopted the ABC test now reflected in AB 5. Under  
16 the ABC test, a worker is considered an employee and not an independent contractor, unless the  
17 hiring entity satisfies all three of the following conditions:

- 18 a. The worker is free from the control and direction of the hiring entity in connection  
19 with the performance of the work, both under the contract for the performance of  
20 the work and in fact;
- 21 b. The worker performs work that is outside the usual course of the hiring entity’s  
22 business; **and**
- 23 c. The worker is customarily engaged in an independently established trade,  
24 occupation, or business of the same nature as that involved in the work performed.

25 12. Importantly, AB 5 places the burden of proving these factors on the hiring entity.  
26 Ryder cannot meet its burden as explained more fully below. To satisfy prong B of the “ABC Test”  
27 the hiring entity (Ryder) must establish that the workers perform work that is outside the usual  
28 course of the hiring entity’s business. Ryder is in the delivery business so it cannot meet this  
requirement for its drivers.

1           13.     Ryder is a third-party logistics business that provides delivery and logistics  
2 services to companies throughout the nation. According to Ryder’s website, Ryder has 637  
3 locations throughout the United States. Ryder is headquartered in Ohio but maintains offices  
4 and is incorporated in California.

5           14.     Ryder hires drivers in California to operate local delivery service to their clients.  
6 Drivers primary job duties are all the same – make deliveries to Ryder’s clients according to  
7 Ryder’s protocols and procedures. The deliveries consist mostly of furniture, appliances, and  
8 fitness equipment. Since at least 2020, Ryder has uniformly required its drivers to sign  
9 agreements called “Master Services Agreements,” (“MSA”) that purports to classify its drivers  
10 as “independent contractors.” A true and correct copy of the MSA is attached to the Complaint  
11 as **Exhibit A**. However, this 27-page document is just one example how Ryder exercises a  
12 high level of control and direction over its drivers, showing that in fact, its drivers are  
13 employees, not independent contractors.

14           15.     The MSAs obligate drivers to follow strict Ryder protocols and policies when  
15 making deliveries. Ryder requires all its drivers to comply with “Ryder Instructions.” MSA  
16 Sect. 3.1. For example, Ryder drivers are required to wear a mask, shoe covers, and gloves at each  
17 delivery. Drivers are also required to lay out blankets and take pictures of the items being delivered  
18 upon completion. Ryder also requires all its drivers to bear the financial responsibility for the  
19 products being delivered. MSA. Sect. 3.2 Ryder forces drivers to assume liability for invoices  
20 costs for Ryder’s customers, and transportation costs, as well as the cost of lost, damages,  
21 stolen, delayed, or vandalized products. MSA Sect. 7.1

22           16.     Ryder further states that drivers must “promptly provide information to Ryder  
23 on an ongoing basis for activities relating to the Product and Services.” MSA Sect. 3.7 Ryder  
24 closely tracks the drivers throughout the day. It requires drivers to download an app on their  
25 personal cell phones called DispatchTrack which has a GPS to track the drivers routes all day. The  
26 app contains the routes for the day and the order of stops. Ryder requires its drivers to complete the  
27 routes in the order listed. Drivers are not allowed to rearrange the order of the stops. To ensure  
28 drivers follow their routes, Ryder charges drivers \$45 if they disable the GPS on the app. Ryder

1 requires drivers to provide it with “tracking information and regular updates with tracking/GPS  
2 technologies, which are approved by Ryder for such communications.” MSA Sect. 3.7. Ryder  
3 keeps such close tabs on its drivers that upon Ryder’s request, drivers are required to respond  
4 within one hour of Ryder’s request for information. *Id.*

5 17. Furthermore, Ryder’s drivers do not have control over their routes or their  
6 compensation. Drivers are not allowed to choose their own routes or negotiate the rates of  
7 payment for the routes. MSA Sect. 4.1. Ryder simply assigns routes to its drivers with  
8 predetermined rates. Ryder retains the right to control drivers’ schedules, routes, what order  
9 drivers must complete their stops, drivers’ appearance, and which customers its drivers deliver  
10 to. Drivers do not separately negotiate with Ryder’s client and makes deliveries based on  
11 Ryder’s contractors with its clients. Plaintiff Leño has repeatedly asked for an explanation of  
12 how he is paid, and a breakdown of the various routes and their rate of pay but Ryder has not given  
13 him one. He understands that each route pays a minimum of \$850 but he is unable to discern how  
14 else he is paid.

15 18. All drivers, including Plaintiff Leño, are required to go through Ryder’s on-  
16 boarding process when they are first hired by the company. Once they start working, drivers are  
17 required to show up to work early at their designated terminal to attend a mandatory Ryder “stand-  
18 up” meeting. If drivers miss this meeting, Ryder charges them \$45.

19 19. Ryder also requires drivers to absorb several business expenses out-of-pocket. As  
20 explained above, this includes hiring insurance, any property damages or lost property. Ryder also  
21 requires drivers to “furnish all equipment and supplies needed for the Services, which may include  
22 all such equipment and supplies shall be safe secure, lawful, clean, odor free, in good working order  
23 and repair, dry, watertight, free of contamination and infestation, and in sufficient and in sufficient  
24 quantities in order to safely and efficiently provide the services.” MSA Sect. 3.3. Ryder inspects  
25 their trucks regularly, and if the truck does not meet Ryder’s standards (i.e., paperwork is in the  
26 manifest, truck is not clean), Ryder charges drivers \$45. Ryder also requires drivers to hire  
27 employees who drivers must pay. Ryder also requires drivers to purchase and wear a uniform of all  
28

1 blue attire, and black shoes. If drivers do not wear this uniform, Ryder charges them \$45. Plaintiff  
2 Leaño was once charged \$45 when he wore cargo pants instead of the required blue pants.

3 20. Drivers are scheduled to (and do) work 12-14 hours per day, 5 days a week. Drivers  
4 like Mr. Leaño work up to 60-70 hours a week. They are not paid overtime for any of these hours.  
5 This packed schedule also means that drivers cannot realistically work for any other delivery  
6 company despite being classified as “independent contractors.” Drivers’ tight schedules also means  
7 that they do not have an opportunity to stop and take compliant meal and rest breaks, nor does  
8 Ryder build these into drivers’ schedules.

9 21. To obfuscate their illegal scheme, Ryder does not provide drivers with itemized  
10 wage statements showing the total hours worked, applicable rates, overtime hours and  
11 accompanying rates. Drivers are simply paid weekly in a lump sum, and their payment information  
12 can only be accessed on-line. In the portal, the payments only show general categories such as  
13 “delivery expense,” “special fee,” “fuel surcharge,” and “accessorials.” It also shows deductions  
14 titled “administrative deductions,” and “openforce fee.” There is no breakdown of the rate of pay  
15 for routes, how many routes were done, any overtime, and any meal or rest break premiums. *See*  
16 exemplar attached as **Exhibit B** to this Complaint. The general descriptions make it basically  
17 impossible for drivers to determine if they are being paid properly. Ryder also fails to pay all  
18 compensation due at the termination of employment.

19 22. By misclassifying its drivers as independent contractors, Ryder evades its  
20 obligations under California law to pay its drivers for all hours worked, provide them meal  
21 and rest breaks, pay them overtime, reimburse them for all necessary expenses, and otherwise  
22 provide them the benefits of their rights as employees.

23 23. **Minimum Wages**. Drivers are paid a fixed rate for their routes. However, they work  
24 approximately 12-14 hours day, beginning with morning meetings, preparing for their route, and  
25 loading equipment. Drivers then must return to Ryder’s facilities to complete paperwork and return  
26 any undelivered equipment. In addition, drivers must pay out of pocket for business expenses such  
27 as the cost of leasing their truck, maintenance and repairs of trucks, using their personal cell phones.  
28 Ryder also deducts certain costs from drivers’ wages for fuel, penalties for failing to comply with

1 its uniform rules, and damages merchandise. The combination of long hours, deductions, and  
2 requiring drivers to pay substantial business expenses, drivers' pay falls below the minimum wage.

3 24. California Labor Code §§ 1194, 1197, 1197.1 and Wage Order 9 entitle employees  
4 to an amount equal or greater than minimum wage for all hours worked. Defendant violated these  
5 provisions because the combination of long hours, deductions, and requiring drivers to pay  
6 substantial business expenses, resulted in drivers' pay falling below the minimum wage.

7 25. **Unpaid Wages:** Ryder's fixed rate payments to drivers for certain routes does not  
8 account for all hours drivers work including pre- and post- delivery work such as morning meetings,  
9 training for assembling equipment and installing appliances, completing paperwork, returning  
10 undelivered merchandise, and other unpaid work. Ryder does not separately compensate drivers  
11 for this required work that can take a few hours a day.

12 26. The failure to compensate for all hours of work performed violates, *inter alia*, Labor  
13 Code §§ 226.2, 223, 510, 558, 1194, 1194.2, 1197, 1198 and Wage Order 9-2001, ¶4.

14 27. **Failure to Reimburse:** Labor Code § 2802 provides that an employer shall  
15 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in  
16 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions  
17 of the employer. Here, Defendant required Plaintiff and the aggrieved employees to incur the  
18 following expenses in direct discharge of their duties and at the direction of Ryder: (1) truck  
19 rental/lease, (2) fueling, (3) vehicle maintenance and repairs, (4) tolls, (5) vehicle insurance, (6)  
20 hiring a "helper," (7) cell phones for use of the DispatchTrack and communicating with Ryder, and  
21 (8) costs for loss or damaged equipment/product. This list is not exhaustive.

22 28. As a result, Plaintiff made expenditures and incurred losses, namely the costs of  
23 their truck rental/lease, fuel, vehicle maintenance and repairs, tolls, vehicle insurance, hiring a  
24 "helper," cell phones bills, and costs for loss or damaged equipment/product. Plaintiff's  
25 expenditures and losses for these expenses were reasonable and necessary because Ryder required  
26 them to pay these costs and did not provide them reimbursement.

27 29. **Unlawful Deductions from Drivers' Wages:** Ryder makes unlawful deductions  
28 from drivers' wages including deductions for ordinary business expenses such as fuel, penalties for

1 uniforms, penalties for failure to comply with Ryder's policies for vehicle maintenance, and claims  
2 for lost or damaged products.

3 30. Under Labor Code §§ 204, 221, and Wage Order 9, drivers are entitled to receive  
4 all wages earned for each pay period without any deductions except for those legally permissible.  
5 Labor Code § 223 makes it unlawful for employers to secretly pay a lower wage scale while  
6 purporting to pay a wage scale designated by statute or contract. Labor Code §§ 400-410 states  
7 employers are not entitled to a set-off of debts owed by their employees against wages due to them  
8 upon termination. IWC wage order No. 9 provides the narrow circumstances under which an  
9 employer can make deductions from employees' wages. These are 1) cash shortage, 2) breakage,  
10 or 3) loss of equipment if the employer can show the shortage, breakage, or loss was the result of  
11 employee's gross negligence or dishonest or willful act. Ryder violates these laws by making the  
12 above-listed deductions.

13 31. **Unlawful Failure to Provide Uninterrupted Off-Duty Meal and Rest Periods.**  
14 Drivers were regularly compelled to work in excess of five and ten hours a day without being  
15 afforded at least half-hour meal periods in which they were completely relieved of all duties as  
16 required by Labor Code §§ 226.7, 512, and 558. The drivers were also regularly permitted and  
17 compelled to work over a four-hour period (or a major fraction thereof) without Ryder authorizing  
18 and permitting them to take paid ten-minute rest periods in which they were completely relieved of  
19 all their duties as required by Labor Code § 226.7.

20 32. Ryder required its drivers to adhere to its tight and demanding route schedules which  
21 sometimes include assembly and appliance installation. Therefore, drivers rarely if ever had the  
22 opportunity to take an uninterrupted meal or rest break. Rather drivers would simply eat on the road  
23 or miss meal and rest breaks entirely. Because Ryder misclassified its drivers as independent  
24 contractors, it also did not keep records or missed meal and rest breaks and did not pay its driver  
25 premiums for meal and rest breaks.

26 33. **Unlawful Failure to Pay Overtime.** As explained above, Ryder schedules its  
27 drivers to work 12-14 hours per day, 60-70 hours per week. Because it misclassifies its drivers as  
28

1 independent contractors, Ryder does not pay its drivers for any overtime worked and instead, only  
2 pays them a flat, fixed rate for the route.

3 34. **Pay Statements.** Defendant willfully failed to provide accurate itemized pay  
4 statements as required by California Labor Code §§ 226, 226.3, and Wage Order 9. In particular,  
5 Defendant failed to accurately list the gross wages earned, the total number of hours worked, all  
6 applicable rates of pay, overtime pay, meal and rest break premiums, and the net wages earned as  
7 required. Drivers are simply paid weekly in a lump sum, and their payment information can be  
8 accessed on-line. In the portal, the payments showing general categories such as “delivery  
9 expense,” “special fee,” “fuel surcharge,” and “accessorials.” It also shows deductions titled  
10 “administrative deductions,” and “openforce fee.” There is no other breakdown of the  
11 compensation so drivers cannot discern how they are paid and if they are being paid properly.

12 35. **Failure to Keep Required Payroll Records.** Ryder has violated Wage Order 9-  
13 2001, California Labor Code §§ 226 and 1174 by willfully failing to keep required payroll records  
14 showing the actual hours worked on a daily basis by the drivers. Ryder is liable for civil penalties  
15 pursuant to California Labor Code §§ 1174.5 and 2698 in the amount of \$500.00 per violation.

16 36. Thus, Plaintiffs are aggrieved employees within the meaning of PAGA.

17 37. Plaintiffs, on behalf of himself and all aggrieved employees presently or formerly  
18 employed by Defendant during the liability period, bring this representative action pursuant to  
19 Labor Code §2699, *et seq.* seeking penalties for Defendant’s violation of Labor Code §§ 201-203,  
20 204, 218, 218.6, 221-223, 226, 226.2, 226.3, 400-410 500, 510, 558, 1182.11, 1182.12, 1194, 1197,  
21 2802, and Wage Order 9-2001.

22  
23 **FIRST CAUSE OF ACTION**  
24 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

25 38. Plaintiffs reallege each allegation of the preceding paragraphs as though fully set  
26 forth.

27 39. Ryder has violated California Labor Code §§ 1182.11, 1182.12, 1194, 1197 and  
28 1197.1 by failing to pay drivers the minimum wage. The combination of long hours, deductions,

1 and requiring drivers to pay substantial business expenses, drivers' pay falls below the minimum  
2 wage. In addition, Ryder's fixed rate payments do not account for all hours the drivers work  
3 including pre- and post- delivery work such as morning meetings, training for assembling  
4 equipment and installing appliances, completing paperwork, returning undelivered merchandise,  
5 and other unpaid work.

6 40. Ryder has violated California Labor Code §§ 204, 223, 226.2, 510, 558, 1194, and  
7 1197 because its fixed rate payments to drivers for certain routes does not account for all hours  
8 drivers work including pre- and post- delivery work such as morning meetings, training for  
9 assembling equipment and installing appliances, completing paperwork, returning undelivered  
10 merchandise, and other unpaid work. Ryder does not separately compensate drivers for this  
11 required work that can take a few hours a day.

12 41. Ryder has also violated Labor Code § 2802-04; Labor Code §§ 221-23, 558 by  
13 failing to indemnify Plaintiffs and other drivers for certain expenditures required for work including  
14 (1) truck rental/lease, (2) fueling, (3) vehicle maintenance and repairs, (4) tolls, (5) vehicle  
15 insurance, (6) hiring a "helper," (7) cell phones for use of the DispatchTrack and communicating  
16 with Ryder, and (8) costs for loss or damaged equipment/product. This list is not exhaustive.

17 42. Ryder makes unlawful deductions from drivers' wages in violation of Labor Code  
18 §§ 204, 218, 218.6, 223, and 400-410, IWC Wage Order No. 9. Ryder makes unlawful deductions  
19 from drivers' wages for ordinary business expenses such as fuel, penalties for uniforms, penalties  
20 for failure to comply with Ryder's policies for vehicle maintenance, and claims for lost or damaged  
21 products.

22 43. Ryder also violates Labor Code §§ 226.7, 512, and 558 by failing to authorize and  
23 permit its drivers to take at least half-hour meal periods in which they were completely relieved of  
24 all duties. Drivers were also regularly permitted and compelled to work over a four-hour period  
25 (or a major fraction thereof) without Ryder authorizing and permitting them to take paid ten-minute  
26 rest periods in which they were completely relieved of all their duties as required by Labor Code §  
27 226.7.  
28

1           44.     Ryder also fails to pay its drivers overtime in violation of Labor Code §§ 558 and  
2 2698, *et seq.* Ryder schedules its drivers to work 12-14 hours per day, 60-70 hours per week.  
3 Because it misclassifies its drivers as independent contractors, Ryder does not pay its drivers for  
4 any overtime worked and instead, only pays them a flat, fixed rate for the route.

5           45.     Labor Code § 226(a) requires employers to furnish each employee with a statement  
6 that accurately reflects gross wages earned, the total number of hours worked, and the net wages  
7 earned. Ryder intentionally fails to furnish each driver with timely, itemized statements that  
8 accurately reflect the gross wages earned, the total number of hours worked, all applicable rates of  
9 pay, overtime pay, meal and rest break premiums, and the net wages earned as required.

10          46.     Ryder has also violated Labor Code §§ 201-2003 by failing, to timely pay  
11 compensation and wages, including unpaid overtime pay and meal and rest break period pay to  
12 those drivers whose employment terminated as required. As a result, Ryder is liable for waiting  
13 time penalties, together with interest and attorneys' fees and costs under California Labor Code §  
14 203.

15          47.     Under Labor Code §§2699(f)(2) and 2699.5, for each violation, Plaintiff and all  
16 other aggrieved employees are entitled to penalties in an amount shown at the time of trial subject  
17 to the following formula:

- 18                   i. \$100 for the initial violation per employee per pay period; and  
19                   ii. \$200 for each subsequent violation per employee per pay period.

20          48.     The penalties will be allocated 75% to the Labor & Workforce Development Agency  
21 and 25% to the affected employees.

22          49.     On April 2, 2024, Plaintiff electronically filed a PAGA Claim Notice to the LWDA,  
23 via the State of California Labor and Workforce Development Agency, and mailed it by certified  
24 mail, return receipt requested, to Defendant setting forth the specific facts and theories of the  
25 violations alleged herein. **Exhibit C.**

26          50.     Pursuant to Labor Code §2699.3(a)(2)(A), the LWDA has 65 calendar days from  
27 this notice to inform the parties whether it intends to investigate the claims.  
28

1           51.     The LWDA did not initiate an investigation within the 65-day time limit; as such,  
2 Plaintiffs are entitled to commence this civil action as the LWDA has chosen not to investigate.

3           WHEREFORE, Plaintiff seeks judgment against Defendant Ryder as follows for Plaintiff  
4 and all aggrieved employees:

5           a.     For penalties and other relief pursuant to Labor Code §2699 *et seq.* for Plaintiff and  
6 all other aggrieved employees;

7           b.     For an award of prejudgment and post judgment interest;

8           c.     Costs of suit;

9           d.     Attorney's fees; and

10          e.     Such other and further relief as the Court may deem proper and just.

11  
12  
13 Dated: June 6, 2024

DESAI LAW FIRM, P.C.

14  
15 By: /s/ Aashish Y. Desai

Aashish Y. Desai

Adrianne DeCastro

Attorneys for Plaintiff and the other  
aggrieved employees

# **EXHIBIT A**

**CONFIDENTIAL**

**CARRIER MASTER SERVICES AGREEMENT**

This Carrier Master Services Agreement (the "Agreement") is made and entered into as of this 20 day of DECEMBER 2022 (the "Effective Date"), between Ryder Last Mile, Inc. ("Ryder"), a Delaware corporation with its principal place of business at 11690 NW 105 Street, Miami, FL 33178, and SLG LLC ("Carrier") with its principal place of business at RYDER. Ryder and Carrier are jointly referred to herein as the "Parties," and individually as a "Party." In consideration of the mutual covenants and promises hereinafter set for the, the Parties agree as follows:

1. **Authorized Scope of Service.** Carrier will provide to Ryder, on a non-exclusive basis, those services directed by Ryder and Ryder's parent, affiliates, subsidiaries, customers, agents, consignees and their employees, officers, shareholders, managers and partners, representatives and agents, and as further agreed upon by the Parties in the Scope(s) of Work attached hereto in Exhibit A, and incorporated herein by reference (collectively, the "Services"). All such Services shall be in accordance with the authority granted Carrier by the applicable federal, state, and local laws and regulations of ~~federal, state, and local~~ and quasi-governmental bodies having jurisdiction with regard to such transportation activities, including, but not limited to the laws, rule and regulations promulgated by, or relating to the U.S. Department of Transportation (the "DOT"), the Surface Transportation Board, DOT's Federal Motor Carrier Safety Administration ("FMCSA"), the Federal Highway Administration, and any successor of any of these bodies (the "Applicable Laws" and "Regulatory Agencies," respectively).

The Parties agree the Services are deemed to be services provided in interstate commerce. Ryder and Carrier agree, pursuant to 49 U.S.C. § 14101(b), that the provisions of 49 U.S.C. Part B shall have no application to the transportation Services to be performed pursuant to this Agreement except to the extent that any such provisions are expressly incorporated or enumerated herein; provided that this waiver of application of the provisions of such Part B does not apply to registration, insurance or safety fitness. To the extent permitted by law, Ryder and Carrier agree that all goods, product, cargo, freight and merchandise (collectively, the "Product") tendered to Carrier by Ryder or its agents, customers, carriers and/or representatives (the "Tender" or "Tendered") shall be governed by the terms and conditions of this Agreement. Ryder and Carrier expressly waive application of the provisions of 49 U.S.C. § 13710(a) to the Services. Notwithstanding the above, the Parties agree that this Agreement contains requirements in excess of the Applicable Laws, and in such events, the provisions of this Agreement shall control. In the event of a conflict between this Agreement and any Applicable Laws, this Agreement shall govern. Further, the Parties expressly waive application of any provisions in Applicable Laws that conflict with the terms of this Agreement.

2. **Carrier's Representations.** Carrier warrants, represents and acknowledges to Ryder that:

(a) at its sole cost and expense, Carrier shall obtain and maintain all of the requisite authority from applicable Regulatory Agencies having jurisdiction over the Services and/or Carrier pursuant to this Agreement, including but not limited to all permits, certificates, insurance and

licenses necessary to perform the Services in accordance with Applicable Laws (collectively, the "Permits"). At Ryder's request, Carrier agrees to immediately make available to Ryder any and all documentation necessary to demonstrate Carrier's compliance with Applicable Laws and all Regulatory Agencies while Carrier is performing Services for Ryder. In the event Carrier receives notice of an audit or inspection by any Regulatory Agency, Carrier shall provide Ryder with notice as soon as practicable and in any event within twenty-four (24) hours of receipt of notice of the audit by Carrier;

(b) the Product and the Services performed by Carrier under this Agreement are not encompassed within the definition of "household goods" as that term is defined in 49 U.S.C. §13102(10);

(c) at all times during the term of this Agreement, Carrier agrees to provide Services as a motor Carrier pursuant to 49 U.S.C. §§13102(4)(B), 13102(12) and 14101(b). The fact that Ryder, any trucking company or Carrier may hold common carrier or household goods authorities and maintain schedules, rules, rates and charges relative thereto, shall have no applicability to the contractual relationship created between the Parties hereunder;

(d) As of the Effective Date Carrier: (i) is not under an "unsatisfactory" or "conditional" rating (or similar such rating as may hereinafter be developed and implemented) under the FMCSA's Compliance, Safety, Accountability ("CSA") program; and (ii) has not received operations out of service order in connection with any public BASIC SCORES, or its equivalent as may be developed by the FMCSA. Further, during the term hereof, Carrier will operate so as not to receive any such "unsatisfactory" or "conditional" safety ratings or such out of service order. In the event Carrier is issued such a rating or receives a warning letter, request for a safety plan, or notices of violation(s), notices of claim(s), or orders, Carrier will immediately provide written notification via overnight express delivery to Ryder. In the event Carrier receives an "unsatisfactory" rating, Carrier's operations for Ryder will be terminated immediately. In the event Carrier receives a "conditional" or similar rating Carrier must demonstrate a corrective action plan, provide monthly updates on the status of the plan and must be restored to "satisfactory" within a time period agreed upon by the Parties, not to exceed nine (9) months;

(e) As part of the Services to be provided pursuant hereto, Carrier shall be responsible for ensuring that Product is safely loaded, handled and secured before any transportation Services are provided;

(f) Carrier shall comply with all Applicable Laws pertaining to employer's liability, workers' compensation and unemployment benefit insurance, and when requested by Ryder, shall furnish proof of such compliance;

(g) Carrier shall comply strictly at all times with all Applicable Laws and rules and regulations of Regulatory Agencies with respect to operations and Services to be performed by Carrier and/or Carrier Employees used by Carrier to provide all or part of the Services under this Agreement. Carrier shall obtain authorization from Ryder to use specific Carrier Employees to provide all or part of the Services prior to beginning using said Carrier Employees to provide Services;

(h) It is contemplated that Carrier will use its employees to perform services under this Agreement ("Carrier Employees"). Carrier will recruit, interview, select, hire, compensate and use Carrier Employees who in Carrier's judgment, are best qualified to perform the Services under this Agreement. All Carrier Employees shall be employed by only the Carrier as W-2 employees. If any owner of the Carrier provides Services under this Agreement, that individual will also be employed by the Carrier as a W-2 employee in the performance of all Services under this Agreement and is included in the definition of Carrier Employees as used herein. As the employer, Carrier solely shall:

- (i) pay all Carrier Employees wages on a W-2 basis and provide other benefits as the Carrier deems appropriate or as are mandated by law;
- (ii) maintain all necessary personnel, time and payroll records for its Carrier Employees;
- (iii) set, calculate and pay all Carrier Employees' wages including, but not limited to, minimum wages, straight time wages, overtime wages and meal and/or rest period premium wages, and withhold taxes and other government mandated withholdings, if any, for Carrier Employees;
- (iv) be solely responsible for paying, withholding and transmitting all contributions, taxes (state taxes, federal taxes, workers' compensation, FICA, and federal unemployment insurance), and assessments with respect to its Carrier Employees under all federal, state, and local laws (excluding sales tax) and shall make and submit required tax disclosures and withholdings.
- (v) reimburse Carrier Employees for all necessary business expenses as required by California Labor Code Section 2802;
- (vi) pay net wages and fringe benefits, if any, directly to its Carrier Employees;
- (vii) provide for liability and fidelity insurance as specified in Section 13 of Exhibit A below;
- (viii) provide workers' compensation insurance coverage in amounts as required by law and handle workers' compensation and unemployment claims involving Carrier Employees;
- (ix) conduct candidate background checks and drug screening as specified below, in compliance with all applicable state, federal and local laws and regulations; and
- (x) verify and ensure that its Carrier Employees have all necessary permits, certifications, licenses and/or documents including, but not limited to, any forms required by U.S. Citizenship and Immigration Services to be timely completed and kept by Carrier in accordance with federal and state laws.

(i) Carrier has the right, in its sole discretion as the employer, to hire, assign, reassign, supervise, performance manage, discipline and/or terminate Carrier Employees. Carrier shall be

solely responsible for selecting, hiring, disciplining, reviewing, evaluating, compensating, and terminating its Carrier Employees performing Services hereunder;

(j) In connection with the performance of this Agreement, Carrier will comply with all laws, regulations, and orders, including, but not limited to, all federal, state and local equal opportunity and employment laws, laws relating to compensation, hours of work or other conditions of employment, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, 42 U.S.C. sections 1981 and/or 1983, National Labor Relations Act, the Immigration Reform and Control Act, the Equal Pay Act of 1963, the Occupational Safety And Health Act, the Fair Credit Reporting Act, the California Consumer Credit Reporting Agencies Act, the California Investigative Consumer Reporting Agencies Act, the Consolidated Omnibus Budget Reconciliation Act, the Family And Medical Leave Act, the California Family Rights Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, the Affordable Care Act, the U.S. or California Constitution, the California Fair Employment and Housing Act, the California Labor Code, the California Wage Orders, the California Code of Regulations, the California Civil Code, the California Business & Professions Code, the California Government Code, the California Healthy Workplace Healthy Family Act of 2014, the Sarbanes-Oxley Act, and all similar federal, state and local employment laws and regulations;

(k) The Carrier Employees under this Agreement shall be solely employees of Carrier and shall not be employees of Ryder. The Carrier will be solely responsible for the payment of any wages, compensation, benefits or other monies due to its Carrier Employees performing services under this Agreement. Ryder will have no responsibility with respect to any payment owing to any Carrier Employees. Carrier Employees shall not be entitled to participate in any of Ryder's employee benefit plans, including pension, 401(k), profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation pay, severance pay, sick pay, flexible time off, holiday pay and other similar plans, programs, agreements, whether reduced to writing or not. Carrier must inform each Carrier Employee that he or she is not an employee of Ryder and is not entitled to any benefits, or to participate in benefit plans, provided by Ryder to its employees, including without limitation group insurance and employee benefit and pension or retirement plans ("employee benefits"). Carrier, on its behalf and on behalf of any Carrier Employees, waives any and all rights to Ryder's employee benefits.

(l) Carrier will have sole responsibility for providing benefits to its Carrier Employees under the California Healthy Workplace Healthy Family Act of 2014 and will fully comply with all requirements of this law, all applicable paid sick leave local ordinances, and any other applicable paid sick leave laws; and

(m) Carrier will have sole responsibility for complying with all provisions of the Patient Protection and Affordable Care Act ("ACA") applicable to all of its Carrier Employees, including, without limitation, by offering a medical plan that meets all the requirements of the ACA.

**3. Service Commitment.** The Parties expressly acknowledge that this Agreement provides for Services designed to meet the distinct and special needs of Ryder and agree Carrier will provide Services consistent with the following:

3.1 The Services are designed to meet the specialized requirements and needs of the Ryder. All Services will be provided in accordance with this Agreement and Ryder's instructions (the "Ryder Instructions") and the Scope(s) of Work. Carrier shall in writing acknowledge receipt of any Ryder Instructions, which Ryder may provide to Carrier from time to time. Carrier agrees to provide, upon Ryder's request, all information sufficient to demonstrate Carrier's compliance with this Section 3.1.

3.2 Carrier accepts responsibility for the safety and security of all Product Tendered by Ryder, Ryder's customers and their contract carriers, agents and representatives, from the point of Tender of such Product to Carrier or Carrier Employees through to the point of delivery of the Product in accordance with Ryder instructions (the "Delivery").

3.3 Carrier shall furnish all equipment and supplies needed for the Services, which may include and all such equipment and supplies shall be safe, secure, lawful, clean, odor free, in good working order and repair, dry, watertight, free of contamination and infestation and in sufficient quantities in order to safely and efficiently provide the Services. For the avoidance of doubt, equipment may include communications equipment. No equipment used with the Services shall have ever been used to store or transport refuse, garbage, trash, or solid or liquid waste of any kind whatsoever, whether hazardous or non-hazardous. Carrier's failure to comply with this Section 3.3 is a material breach of this Agreement. If Ryder notifies Carrier that any equipment and/or supplies used by Carrier in providing the Services is not satisfactory to Ryder or meet the standards set forth in this Section 3.3, then Carrier shall cease utilizing such equipment and/or supplies, in connection with the Services rendered hereunder until Ryder's concerns have been resolved to Ryder's satisfaction.

3.4 ~~Carrier's~~ Carrier Employees shall be trained, competent and properly permitted to provide the Services. Carrier shall provide to Ryder, written certification that all of its Carrier Employees assigned to provide any part of the Services meet and or exceed the requirements of Applicable Laws and of applicable Regulating Agencies.

3.5 Carrier will provide proper, legal, timely, safe and secure Services in full compliance with all Applicable Laws and Regulatory Agencies, and in a professional and efficient manner. At all times while Carrier Employees are on or about Ryder's or its customer's, agents' and/or representatives' properties, Carrier shall ensure that all Carrier Employees comply with reasonable security policies in effect at all such properties. If Ryder notifies Carrier that any Carrier Employee is not satisfactory to Ryder, and after prompt investigation, Carrier finds such concerns meritorious, then Carrier shall cease utilizing such Carrier Employee in connection with Services rendered hereunder. However, such decision shall have no effect on the employment relationship between Carrier and any Carrier Employee.

3.6 Carrier shall issue, cause to be issued or sign a bill of lading or freight receipt adequately describing the Product, for all Product Tendered to it and noting exceptions, if any, to the apparent good order and condition of the Product. All bills of lading and manifests shall be deemed "through bills of lading" to the ultimate destination and Carrier will be liable to Ryder for any loss, damage and/or delay in accordance with the terms of this Agreement regardless of any separate contracts entered into by Carrier ~~and its Carrier Employees~~. The absence or loss of any such bill of lading or receipt shall not relieve Carrier of its obligations and responsibilities with

respect to any Services to be provided hereunder. Upon acceptance of the Product and upon Delivery, Carrier shall obtain a receipt in a form acceptable to Ryder, showing the type and quantity of Product Delivered, the condition of such Product and the place, date and time of Delivery, and Carrier shall forward copies of all such Delivery receipts to Ryder on the next business day following Delivery, but in any event not later than twenty-four (24) hours after Delivery. Any bill of lading, receipt, invoice, or any other shipping document is a convenience document and any and all terms and conditions appearing thereon are subordinate to the terms and conditions of this Agreement, and in all instances where there is a conflict with any such bill of lading, receipt, invoice or any other shipping document, the terms and conditions of this Agreement shall control.

3.7 Carrier will promptly provide information to Ryder on an ongoing basis for activities relating to the Product and Services. Carrier shall immediately communicate problems associated with the performance of Services to Ryder and any discrepancies relating to the Product. From time of Tender through to Delivery, Carrier shall provide Ryder with tracking information and regular updates with tracking/GPS technologies, which are approved by Ryder for such communications. Upon request of Ryder, additional updates will be provided to Ryder within one (1) hour of such request.

3.8 Carrier shall promptly, safely and efficiently provide all Services with reasonable dispatch and without delay. Carrier agrees to use its best efforts to expedite Services when so requested by Ryder and Deliver all Product in like order as when Tendered and in good order and condition. Carrier further agrees to comply with all pick-up and Delivery deadlines requested by Ryder that may be reasonably adhered to and performed safely without violating Applicable Law or endangering the public, Carrier's BASIC SCORES and/or the Product,

3.9 Carrier shall retain full and complete and accurate records of shipping records and all documents relating to the Services, including hard copies and all electronic data interchange messages, Claim documents, invoices, Overcharge Claims, Undercharge Claims, and related communications exchanged by the Parties, for a period of three (3) years following Delivery or such greater period of time as may be required by Applicable Laws. Upon request, Carrier shall provide copies of all such records to Ryder.

#### **4. Payment Terms.**

4.1 As full compensation for the Services provided and expenses incurred by Carrier, Ryder shall pay Carrier in accordance with the rates, and charges set forth in the Scope of Work (the "Rates"). Rates are not subject to a general rate increases. The Rates may only be amended in writing in accordance with Section 14 below.

4.2 Carrier agrees to send to Ryder at the address designated herein, or to such other address as designated by Ryder, invoices for all Services provided, together with all other documentation or data necessary to support payment thereof (hereafter, collectively the "Invoices") (provided, however, that neither this requirement nor any other provision in this Agreement shall obligate Ryder to provide Product to Carrier or require that Ryder request a certain Services (in either type or quantity) from Carrier therefore in any manner whether daily, weekly, monthly or otherwise). The invoices should be in sufficient detail to permit Ryder to make

an independent calculation of the amount owed. Notwithstanding the above, Carrier agrees that invoices representing amounts due must be received by Ryder within forty-five (45) days of Delivery or as applicable, an attempted delivery to the same. Invoices submitted for payment of Services performed after forty-five (45) days from such Delivery or attempted delivery will be void and forever barred and Carrier agrees Ryder will not be obligated for payment thereof.

4.3 Carrier shall be solely and exclusively liable for, and responsible to pay all taxes, licenses, permits, tools and other fees necessary to provide the Services and to Carrier Employees for payment of any and all Carrier Employees' charges relating to the Services. Ryder is solely and exclusively liable to Carrier for the payment of any and all Rates for Services, and Carrier agrees not to look to Ryder customers or others for the payment of such Rates. Ryder's sole obligation with regard to the payment for Services is to pay Carrier as set forth in this Agreement.

4.4 Overcharge claims shall be filed within twelve (12) months of Ryder's receipt of the invoice containing the contested charges (the "Overcharge Claim"). Failure to file such Overcharge Claims within the stated limitations shall be an absolute bar to further pursuit of such. Ryder reserves the right to withhold any amount contested in good faith and pay only invoiced amounts not in dispute pending resolution of said dispute. Ryder will provide Carrier written notice of the reason for any dispute, the amount in dispute and the amount of payment withheld in accordance with this Section 4.4. Carrier agrees to process Overcharge Claims within sixty (60) days of the date on which the written Overcharge Claim was received by the Carrier. Legal proceedings for unresolved Overcharge Claims must be initiated within eighteen months (18) months from the date Carrier denies the Overcharge Claim.

4.5 Undercharge claims shall be filed within one hundred and eighty (180) days from the date of the original invoice (the "Undercharge Claim"). Failure to file such Undercharge Claims within the stated limitations shall be an absolute bar to further pursuit of such. Ryder agrees to process Undercharge Claims within ninety (90) days of the date on which the written Undercharge Claim was received by the Ryder. Legal proceedings for unresolved Undercharge Claims must be initiated within eighteen months (18) months from the date of the original invoice.

4.6 Ryder reserves the right to deduct and offset any amount payable to Carrier under this Agreement against any amounts owed by Carrier to Ryder for Overcharge Claims, duplicate payments, indemnification demands, Claims (as defined below), Carrier's failure to perform its other obligations under this Agreement, including but not limited to failure to follow Ryder Instructions, or for any other amounts owed to Ryder by Carrier. Ryder will provide Carrier with information or data to support said deduction or offset.

4.7 Carrier does not have, and will not assert any lien, right, or interest in any Product for any reason whatsoever, including any right to hold any Product after Ryder has made demand for its return or proper Delivery. Carrier shall also ensure that Carrier Employees do not exercise any rights they may have, if any, to place a lien on the Products for any reason whatsoever.

4.8 From time to time during the term of this Agreement and for one (1) year following termination or expiration of the Agreement, Carrier agrees to the performance of audits, inspection and examinations during regular business hours of: (i) any Terminal or on-or off-site location, facility, storage units or other areas that may store Product or from which Carrier is providing the

Services; (ii) any Services provided under the Agreement; (iii) data, books, logs, records and other documentation in any media relating to the Product and/or Services; and (iv) Carrier Employee qualification records and accident logs. Carrier agrees to assist and cooperate fully with Ryder, Ryder customers, and their agents during any such audits and post-audit undertakings, including but not limited to the reasonable use of Carrier's locations, facilities and resources.

4.9 Carrier grants Ryder the right to audit, review and copy any and all records relating to the Carrier Employees, upon request by Ryder. Ryder shall have a right to audit, review and copy all such records during the term of this Agreement and for a period of up to five (5) years following the termination of this Agreement. If such audit reveals any breach of this Agreement, then in addition to its other rights and remedies, Ryder may immediately terminate this Agreement.

4.10 The provisions of this Section 4 shall survive cancellation, termination or expiration of this Agreement, or final payment for Services.

## **5. Independent Contractor**

5.1 Nothing herein shall be deemed to create the relationship of employee and employer, principal and agent, partnership, or of joint venture. Carrier shall provide Services as an independent contractor and as such, will have sole and exclusive control over the manner in which Carrier Employees perform Services under this Agreement. Neither Carrier or its employees ~~nor any of Carrier's Employees~~ are to be considered employees or agents of Ryder insofar as the subject matter of this Agreement is concerned or in performing Services under this Agreement for any purpose whatsoever.

5.2 Despite the provisions of this Section 5, should a court of competent jurisdiction or any Regulating Agency of any federal, state or local government, or any quasi-governmental agency determine that Carrier or its employees, agents, contractors, workers, ~~or Carrier Employees~~ are employees of Ryder for any purposes whatsoever including, but not limited to, failure to report employee wages violation(s) of federal, state, or local law, ordinance or regulation, including but not limited to wage, human rights, and antidiscrimination statutes, or liability for withholding taxes, social security, unemployment compensation, workers' compensation coverage/liability or similar taxes, Carrier shall indemnify, defend and hold harmless Ryder in accordance with Section 10 below.

## **6. Insurance**

6.1 Carrier will obtain and maintain during the term of this Agreement, all insurance coverage required by Applicable Law and the Scope(s) of Work.

6.2 Carrier's insurance carried in accordance with this Section 6.1 shall be primary and non-contributory nor excess to any insurance carried by Ryder.

6.3 Carrier shall furnish to Ryder the address stated in Exhibit A, as amended from time to time, for all coverages prior to Effective Date, and thereafter, not less than thirty (30) days prior to the expiration dates of the policies, a new or renewed Certificate of Insurance, executed by a duly authorized representative of each applicable insurer. Upon Ryder's request, Carrier shall provide Ryder copy(ies) of insurance policies evidencing coverages required herein.

6.4 Carrier shall name Ryder, and its parent, affiliates, subsidiaries and related entities, as additional insureds on motor vehicle liability insurance, motor truck cargo and commercial general liability insurance policies. Upon written request of Ryder, Carrier shall also name any Ryder customer for which Carrier is providing Services as an additional insured.

6.5 Carrier shall within forty-eight (48) hours of receipt of any notice of cancellation of coverages or modification of amounts of such insurance, give Ryder written notice of the same.

6.6 Carrier shall be responsible for any deductible or similar amount payable pursuant to any insurance obtained by Carrier under this Agreement. In no event shall any deductible for coverages required herein be in an amount in excess of the amount stated on Exhibit A, without Ryder's prior written approval.

6.7 Carrier hereby waives and releases for itself and its insurers, any and all rights of recovery, claim, action or cause of action, against Ryder, for loss or damage to persons or property and Carrier covenants that no insurer shall hold any right of subrogation against Ryder. The failure of Carrier to secure an appropriate clause in or endorsement to its respective insurance coverage which waives the right of subrogation, as provided for above, shall not in any manner affect the intended waiver and release.

6.8 Ryder makes no representation, by requiring insurance herein, that the types, forms, or minimum acceptable limits of insurance stated herein are adequate to protect the interests of Carrier. The insurance requirements set forth herein shall not, nor do such requirements, limit Carrier's liability under this Agreement to the amounts of such insurance. Carrier agrees to accept liability as set forth in this Agreement and for damages resulting from the lack of or the inadequate amounts of insurance coverage. Carrier agrees that any failure to obtain, maintain or renew any insurance as required or to perform any obligation required of it in this Section 6 constitutes a material breach of this Agreement. Notwithstanding the above stated requirements related to insurance, Carrier understands and knowingly agrees that it shall be responsible to Ryder for lost, stolen, damaged or delayed Product. Carrier further understands and covenants that any loss or damage not subject to insurance coverage or not fully satisfied by insurance proceeds required under this Agreement will remain the direct responsibility of Carrier. Additionally, neither the bankruptcy, insolvency, nor denial of liability by any insurance company shall relieve Carrier of responsibility for damages as set forth herein.

## **7. Liability for Product.**

7.1 Carrier shall assume liability for and shall be responsible to Ryder for the invoice cost as paid by Ryder's customer, plus commercially reasonable transportation costs (the "Landed Cost") of all lost, damaged, stolen, delayed and vandalized Product, including transportation costs related to the return and replacement of such lost, damaged, stolen, delayed and vandalized Product, which occurs after Tender of the Product to Carrier and/or Carrier Employees up through the point of Delivery of the Product in strict accord with Ryder Instructions, regardless of whether the Product was in the physical possession of Carrier or Carrier Employees. Carrier's maximum liability to Ryder arising out of or related to loss, damage, theft, delay and vandalism to Products is as agreed upon in the Scope(s) of Work (the "Maximum Liability for Products"), except that in the event such loss, damage, theft, delay or vandalism is the result of Carrier's and/or Carrier

Employees' gross negligence or willful misconduct, Carrier shall be liable to Ryder for the full retail value of the Product, plus any and all additional costs or expenses arising from the loss, damage, theft, delay or vandalism (including but not limited to attorneys' fees, court costs and other legal expenses incurred) without the benefit of a Maximum Liability for Products.

**7.2 Exceptions to Liability.** Notwithstanding anything contained in this Agreement to the contrary, Carrier shall not be liable for any loss, damage, delay, theft and/or vandalism: (i) of the Products that occur prior to the Tender of the Product to Carrier and/or Carrier Employees, or occurring after the Delivery of the Product, except to the extent proximately caused by Carrier's and/or Carrier Employees' negligence, fraud and/or willful misconduct; (ii) attributable to or otherwise caused by any inherent defects in the Product; (iii) attributable to a Force Majeure Event (as defined in Section 22 below); or (iv) attributable to or otherwise solely caused by the gross negligence or intentional misconduct of Ryder.

**7.3** Carrier acknowledges that Ryder may utilize other brokers or carriers to facilitate the movement of delayed Services or to ship replacement goods. In all such events, Carrier shall be responsible for reasonable costs, charges and fees and expenses resulting from Services provided by another Carrier.

**7.4** The liability of Carrier for any Claim shall not be limited by any exclusion in Carrier's insurance or by the amount of coverage or policy limits of any such insurance.

**7.5** The provisions of this Section 7 shall survive cancellation, termination, or expiration of this Agreement or final payment.

## **8. Product Claims.**

**8.1** All Product claims by Ryder for loss, damage, delay, theft or vandalism of any Product, must be made in writing within nine (9) months after: (a) in the case of damaged or vandalized Product or lost, damaged, stolen or vandalized property, the actual date of Delivery of the Product; or (b) in the case of lost or stolen Products, the scheduled date of delivery, and if no such scheduled date for delivery after the expiration of a reasonable period of time (the "Claim"). Ryder will attempt to report Claims to Carrier within thirty (30) days of Ryder's receipt of notice of a claim from Ryder's customers, but any failure by Ryder to provide such notice will not affect the filing or processing of a Claim. Any representative of Ryder is authorized to furnish Carrier with a written Claim. Carrier agrees that it will process, investigate, settle and/or deny all Claims within thirty (30) days of receipt, and will provide documentation of Carrier's decision to Ryder within said time frame. Any Claim not brought to a mutually agreed upon resolution within said thirty (30) days period may, at Ryder's sole discretion, be set-off against any and all future amounts due to Carrier from Ryder, until satisfied in full. Any proceeding arising from any such Claim must be instituted within the lesser of: (y) two (2) years after Carrier's denial of such Claim; or (z) the statutory time frame for initiating an action for recovery.

**8.2** Carrier shall immediately notify Ryder of any Product damaged, lost, stolen, delayed or vandalized, or rejected by Ryder Customer, and then return all such Product to Ryder in accordance with Ryder Instructions at Carrier's sole cost and expense. Ryder will determine in

its sole discretion whether the Product may be salvaged, and if salvaged, the salvage receipts received by Ryder will be credited against the Claim pertaining to the Product salvaged.

8.3 The provisions of this Section 8 shall survive cancellation, termination or expiration of this Agreement, or final payment for Services.

**9. Term and Termination.** Term and termination is in accordance with the applicable Scope(s) of Work. This Agreement shall terminate upon the termination or expiration of all Scope(s) of Work executed by the Parties except as provided for breach as stated in Section 11 of the Scope(s) of Work.

**10. Indemnity.**

10.1 Except for Product Claims addressed in Sections 7 & 8 above, Carrier agrees to defend, indemnify and hold harmless Ryder (individually, each an "Indemnified Party" and collectively, "Indemnified Parties") from all losses, claims, lawsuits, causes of actions, demands, liens, subrogated claims, damages, judgments, fees, fines, penalties, assessments, settlements, costs and expenses (including incidental, special, consequential and/or punitive damages and attorneys' fees, disbursements and costs of investigation) (collectively, "Losses"), arising out of or related to any of the following whether actual or alleged and whether the same may have resulted from the joint, concurring, or contributory negligence of any one or all of the Indemnified Parties or any other person or persons:

(a) death of, injury to, or illness of any person (including, but not limited to, Carrier Employees), damage to or loss of any property, real or personal, or any other damage or loss to any person, due in whole or in part to the acts or omissions of Carrier, Carrier Employees and their employees, subcontractors, or agents, whether or not lawful or related to their performance of the Services;

(b) Carrier's or Carrier Employees' transport of Product without proper operating authority or not in compliance with all Applicable Laws;

(c) Carrier's and/or Carrier Employees' violation of any Applicable Law, statute, ordinance, code, rule, regulation or requirement of a Regulating Agency, including but not limited to employment eligibility, employer's liability, workers' compensation and unemployment benefit insurance;

(d) Carrier's or Carrier Employees' performance and/or breach of any provision of this Agreement;

(e) Carrier's and/or Carrier Employees' breach or alleged breach of any agreement without a third party principal of Carrier or, shipper of Carrier, other than Ryder, with respect to the Services provided hereunder;

(f) any demand, claim, charge, suit or accusation of any kind of direct, joint or vicarious liability based on conduct of any kind allegedly imputed to Ryder as the "employer" or "joint employer" of any of the Carrier Employees concerning any claim brought under any federal, state, or local statute, law, regulation, or ordinance, including, but not limited to, Title VII of the

Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, 42 U.S.C. sections 1981 and/or 1983, National Labor Relations Act, Immigration Reform and Control Act, the Equal Pay Act of 1963, the Occupational Safety And Health Act, the Fair Credit Reporting Act, California Consumer Credit Reporting Agencies Act, California Investigative Consumer Reporting Agencies Act, the Consolidated Omnibus Budget Reconciliation Act, the California Family Rights Act, the Family And Medical Leave Act, the Fair Labor Standards Act, the Sarbanes-Oxley Act, the Employee Retirement Income Security Act, The Affordable Care Act, the U.S. or California Constitution, the California Labor Code, the California Healthy Workplace Healthy Family Act of 2014, the Fair Employment and Housing Act, the California Wage Orders, the California Code of Regulations, the California Civil Code, the California Business & Professions Code, the California Government Code, all similar state and local statutory employment claims, and any common law claims including, but not limited to, claims for breach of contract, interference with contract, breach of the implied covenant of good faith and fair dealing, misclassification, wrongful termination, retaliation, discrimination, violation of public policy, whistle blowing, privacy, negligent hiring, supervision and/or retention, assault, battery, defamation, libel, false imprisonment, and other tortious interference, and intentional or negligent infliction of emotional distress, and further including any claim brought as representative or collective actions by or that encompass Carrier Employees;

(g) the negligence, willful misconduct, or violation of law by any Carrier Employee in the performance of services under this Agreement; and/or

(h) any and all payments or failures to pay taxes, withholding taxes, social security taxes, benefits (if applicable), worker's compensation premiums, unemployment and any other taxes or payroll deductions as may be required by Applicable Law or Regulating Agency, and any and all claims by Carrier, Carrier Employees ~~and their employees, contractors, agents, representatives,~~ and/or third parties that such persons are employees of any Indemnified Party.

#### 10.2 Procedure for Indemnification of Third Party Claims:

(a) Ryder shall notify Carrier in writing of the third party claim and deliver to Carrier a copy of the claim, process and all legal pleadings with respect to the claim.

(b) Carrier will notify Ryder of its assumption of Ryder's defense of the third party claim. Carrier's assumption of the defense acknowledges its obligation to indemnify and hold harmless Ryder from the third party claim.

(c) In all matters as to which Carrier's obligation under this Agreement to defend, indemnify, and hold harmless Ryder arises, whether or not litigation is actually commenced or the allegations are meritorious, Ryder shall be free to choose and retain counsel at Carrier's expense including, but not limited to, attorneys' fees and costs, provided that Ryder shall secure the consent as soon as reasonably practicable of the Carrier as to such selection, which shall not be unreasonably withheld by Carrier.

10.3 The provisions of this Section 10 shall survive cancellation, termination or expiration of this Agreement, or final payment for Services.

**11. Assignment.** This Agreement shall inure to the benefit of the Parties and bind the legal representatives, successors, and assigns of the Parties to this Agreement, provided, however, that Carrier shall not assign this Agreement or any interest, right or obligation under or in this Agreement without having first obtained the written consent of Ryder, and any attempted assignment without such consent shall be void.

**12. Waiver.** The waiver of a breach of, or a waiver of compliance with, any of the terms or conditions of this Agreement shall be limited to the act or acts constituting such breach, and shall never be construed as being a continuing or permanent waiver of any such terms or conditions, all of which shall continue and remain in full force and effect as to future acts or happenings, notwithstanding any such waiver.

**13. Entire Agreement.** This Agreement and the Exhibits thereto shall constitute the entire Agreement between the Parties and any prior agreement, understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party except to the extent incorporated into this Agreement. In the event there is a conflict between the Agreement and any such Scope of Work in Exhibit A, the terms and conditions of the Scope of Work will control.

**14. Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing signed by an authorized representative of each Party.

**15. Choice of Law.** It is the intention of the Parties that this Agreement and their performances under this Agreement in all suits and special proceedings will be construed in accordance with the laws of the State of Florida, without regard to the laws of conflicts. The Parties hereby waive any objection to such jurisdiction and venue, whether based upon the nature of the forum, inconvenience or other basis.

**16. Dispute Resolution.** All disputes, claims, or controversies between the Parties under or relating to this Agreement or the performance thereof shall be resolved exclusively by binding individual arbitration. The Parties further agree that no arbitration can be brought by either Ryder or Carrier on a class, collective, representative, or consolidated basis. A neutral arbitrator will be selected by mutual agreement of the Parties. If the Parties cannot mutually agree on an arbitrator, any party can request a court of competent jurisdiction to appoint one. All disputes between the Parties under or relating to this Agreement or the performance thereof shall be resolved exclusively by binding arbitration. The arbitration will be held in the Miami-Dade County, Florida, unless otherwise mutually agreed upon, in accordance with the then applying Commercial Arbitration Rules of the American Arbitration Association. The arbitration, including discovery, motions and other procedures, will be conducted in accordance with the Federal Rules of Civil Procedure ("FRCP"), except as otherwise provided in this Agreement. A copy of the FRCP can be obtained on this website: <https://www.law.cornell.edu/rules/frcp>. The Parties hereby waive any objection to such jurisdiction and venue, whether based upon the nature of the forum, inconvenience or other basis. This Section does not cover any claims that may not be subject to a predispute arbitration agreement. The costs of the arbitration shall be shared equally by Ryder and Carrier, and each party shall bear its own attorneys' fees.

**16.17. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument. A fully executed copy of this Agreement shall have the same force and effect as a fully executed original.

**17.18. Notices.** All notices shall be in writing. Notices personally served or in the case of overnight courier shall be deemed delivered upon receipt. Mailed notices shall be deemed to have been delivered the third day following mailing, if mailed by first class mail (registered or certified with postage prepaid) to the parties at the address listed below or other address subsequently designated by them in writing:

**Ryder:** Ryder Last Mile, Inc.  
11690 NW 105 Street  
Miami, FL 33178  
Attention: General Counsel

**CARRIER:**

SLG LLC  
24127 33RD ST  
HIGHLAND CA 92346

**18.19. Section Headings.** The titles to the Sections of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

**19.20. Severable Provisions.** The provisions of this Agreement are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions and any partially unenforceable provision to the extent enforceable will nevertheless be binding and enforceable.

**20.21. Confidentiality.** Carrier acknowledges that materials and information which Carrier may acquire about Ryder, including, without limitation, management software programs, intellectual property, staffing methods, network designs, contracts, pricing and customer information, delivery statistics and procedures, trademarks, copyrights, financial information, financial or other accounting systems and other procedures and processes relating to Services and businesses are considered by Ryder to be proprietary and confidential. Carrier shall maintain such information in confidence, both during and after the term of this Agreement, shall not disclose such information, directly or indirectly, to any person, except for officers and employees of Carrier requiring such information to perform Services pursuant to this Agreement, and shall not use such information for the benefit of Carrier except in connection with its performance under this Agreement. Carrier shall require all of its officers and employees to whom such information is disclosed to sign an agreement containing these terms, to agree to maintain the confidentiality of such information and materials and not to disclose such information to others. Carrier shall be liable to Ryder for damages caused by any breach of this provision. In addition to any other rights or remedies that may be available to Ryder, Ryder shall be entitled to injunctive relief or specific performance against Carrier or its officers and employees to prevent a breach of this provision.

Carrier agrees that any breach of this provision will cause irreparable injury to Ryder and that money damages are not an adequate remedy. Upon termination of this Agreement, Carrier shall deliver to Ryder all such confidential information and materials, together with all copies thereof. Carrier shall have no obligation to preserve the confidentiality of any such information which: (i) is in the public domain or generally available to the public; (ii) is independently developed without breach of this Agreement; (iii) is lawfully acquired by Carrier from a third-party under no obligation of confidence to Ryder; or (iv) Carrier is obligated under law or court order to disclose, provided however, Carrier will disclose only that portion of the confidential information necessary to ensure compliance with such legal requirement following prior written notice to Ryder of its intention to do the same. The provisions of this Section 20 shall survive cancellation, termination or expiration of this Agreement, or final payment for Services.

#### **21.22. Non-Solicitation.**

~~21.1~~22.1 During the term of this Agreement and any extensions thereof, Carrier shall not, directly or indirectly, solicit for employment, employ, or retain the services of any current or former employee or independent contractor of Ryder or Ryder's customer at any time during the term of this Agreement, for any reason.

~~21.2~~ During the term of this Agreement and any extensions thereof, and for a one (1) year period following termination of this Agreement, Carrier shall not, either directly or indirectly, service, call on, solicit, or take away, or attempt to service, call on, solicit, or take away for, to, or on behalf of any business in competition with Ryder or Ryder's customer, whether on behalf of Carrier or any affiliate of Carrier, any Ryder customers that were disclosed to Carrier or for whom Carrier provided Services at any time during the term of this Agreement.

~~21.3~~22.2 Carrier agrees both during the term of this Agreement and in perpetuity thereafter, Carrier shall not use Ryder's trade secrets, as defined by applicable law, to engage in any of the behavior outlined in Sections 21.1 and 21.2, which includes, but is not limited to, solicitation of Ryder's customers or employees.

~~21.4~~22.3 Carrier acknowledges and agrees that the foregoing covenants are reasonable as to both time and scope, and are required for the protection of Ryder's legitimate business interests. Carrier agrees that in the event of any breach of these covenants by Carrier, Ryder's remedies at law will be inadequate to completely rectify the breach. Carrier agrees that in such event, Ryder will have the right to specific performance and injunctive relief in addition to any and all other rights and remedies available at law or in equity. Additionally, Carrier will be obligated to pay Ryder, for a period of three (3) years thereafter, a commission in the amount of thirty five percent (35%) of the revenue resulting from the services Carrier provided to Ryder customer in violation of this Agreement, and Carrier agrees to make its records and books available to Ryder to determine the extent of the violation or other violations of this Section 21.

~~21.5~~22.4 If any court of competent jurisdiction finds that the time periods of the foregoing covenants are too lengthy or the scope of the covenants too broad, the restrictive time period shall be deemed to be the longest period permissible by law and the scope shall be deemed to comprise the largest scope permissible by law under the circumstances.

~~21.6~~22.5 The provisions of this Section 21 shall survive cancellation, termination or expiration of this Agreement, or final payment for Services.

~~22.23.~~ **Force Majeure.** Neither Party to this Agreement shall be liable to the other for any loss, cost, or damages arising out of, or resulting from, any delay or failure to perform in accordance with the terms of this Agreement where such delay or failure shall be beyond the reasonable control of such Party, which shall be deemed to mean, but not limited to, Act of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades, insurrections, riots, pandemic events, governmental action, explosions, fire, or floods. The non-performing Party will give notice of the non-performance or delay only to the extent and for such time as the cause that prevents performance or delay occurs. Theft, loss of, or damage to Product handled by Carrier pursuant to this Agreement, shall not be considered excused, regardless of cause.

~~23.24.~~ **Survival of Provisions.** The expiration or termination of this Agreement shall not affect the provisions of this Agreement, and the rights and obligations set forth therein, which either: (a) by their terms state or evidence the intent of the Parties that the provisions survive the expiration or termination hereof; or (b) must survive to give effect to the provisions thereof.

~~24.25.~~ **Records Retention.** Carrier shall keep full, complete and accurate records of shipments moved (to include bills of lading/receipts signed at the destination by a consignee) under this Agreement for a period of three (3) years. Such records shall be provided promptly to Ryder upon Ryder's request.

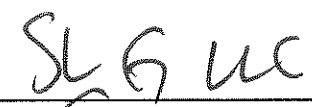
~~25.26.~~ **Construction.** This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both parties had prepared the same.

~~26.27.~~ **Equal Opportunity And Affirmative Action.** To the extent applicable, Carrier and Ryder both affirmatively state that they are equal opportunity employers and recognize the commitment of the other in this area. **This contractor and subcontractor shall abide by the requirements of 41 CFR Part 60-1-.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require the covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Failure to abide by this paragraph will be treated as a breach of the terms of this Agreement.**

IN WITNESS WHEREOF, the authorized representative of each Party hereto has signed this Master Services Agreement as of the day and year first written above.

RYDER LAST MILE, INC.

Signature: 

Carrier: 

Signature: 

Print Name: Robert Ferrara

Title: GLM

Date: 12/20/22

Print Name: E LEAND

Title: OWNER

Date: 12 20 22

**EXHIBIT A**  
**SCOPE OF WORK**  
**HUB TRANSPORTATION SERVICES**

This Scope of Work provides for terms and conditions in addition to those provided for in the Carrier Master Carrier Services Agreement by and between Carrier and Ryder dated 12/20, 2022 (the "Agreement").

1. **Services:** In addition to the Services described in Section 1 of the Agreement, hub support and transportation Services also include the safe and secure receipt of Product at Ryder's hubs and/or facilities identified below (the "Ryder's Hubs"), cross dock, unloading, picking, sorting, ticketing, consolidation, staging, scheduling delivery, routing, loading and/or holding such Product for subsequent in-home or retail Delivery in accordance with Ryder Instructions.

2. **Ryder Hubs:** the Ryder Hub locations at which Carrier will perform Services are listed on the rate sheets incorporated herein and made a part hereof by reference.

3. **Carrier Permits:** include MC# 90623 to provide Services as a motor carrier in interstate commerce.

4. **Ryder Instructions:** Carrier shall in writing acknowledge receipt of any Ryder instructions which Ryder may provide to Carrier from time to time. Ryder Instructions may be labeled as "SOPs." Transportation specific Ryder Instructions (such as special instructions for load specific Services) will be provided to Carrier in writing at the time of Tender of the Product to Carrier or Carrier Employees.

5. **Timeliness:** Carrier's timely performance of all of its obligations in this Agreement is of the essence. Carrier accepted responsibility for on-time performance in completing Deliveries within the identified windows set forth in the Ryder Instructions. Carrier ~~Carrier's timely performance of all of its obligations in this Agreement is of the essence. Carrier accepts responsibility for on-time performance in completing Deliveries within the identified windows set forth in the Ryder Instructions.~~ Carrier shall ensure Carrier Employees, accurately complete the Proof of Delivery ("POD"), including responding to all survey questions, and ensure all PODs include the signatures of Ryder customers and the driver. Carrier shall immediately provide Ryder with a copy of all such PODs, bills of lading, manifests and other documents relating to the Product, Services and/or Delivery.

6. **Engagement Standards:** Carrier and Carrier Employees shall comply with the engagement standards required by Ryder's customers as set forth in **Schedule 1** attached hereto and incorporated herein. Carrier retains the absolute discretion to hire or not hire, train, supervise, discipline, and/or end engagement of its Carrier Employees working hereunder. At any time during the term of this Agreement, at Ryder's request, Carrier agrees to immediately make available to Ryder any and all documentation required by Ryder's customers that demonstrates Carrier's compliance with the engagement standards set forth in this Agreement and Ryder instructions.

7. **Maximum Liability for Products:** Carrier's Maximum Liability for Products shall not exceed one hundred thousand dollars (\$100,000) per truckload, except that in the event such

loss, damage, theft, delay or vandalism is the result of Carrier's and/or Carrier Employees gross negligence or willful misconduct.

8. **Rates:** Rates for the Services are those outlined in **Schedule 2** attached hereto and incorporated herein. Carrier may also receive compensation for eligible Services provided under Ryder's Fuel Surcharge Program outlined in Schedule 3. Mileage is calculated based on zip code to zip code of the applicable origin(s) and destination(s) using practical route miles. Ryder shall pay all invoices within seven (7) days of receipt.

9. **Property Claims.** Property claims involve any and all losses, damages, vandalisms, and thefts to real property, and any buildings, appurtenances and personal property on or around such real property ("Property Claims"). Ryder will provide Carrier written notice of any such Property Claims received by Ryder. Carrier shall provide Ryder with prompt written notice of any Property Claims it receives. Carrier shall contact the consignee within twenty-four (24) hours of receiving a Property Claim (either from the consignee or Ryder) in an effort to promptly investigate and resolve all such Property Claims. Carrier shall respond to Ryder's notice of Property Claim with information about its investigation, resolution if any, and/or determination, within ten (10) days of receipt of the Property Claim. Notwithstanding the above, Ryder may at its sole option, with or without notice to Carrier, resolve any Ryder customer Property Claims in any manner it deems proper in its sole discretion and Carrier shall immediately indemnify and hold harmless Ryder for all such costs and expenses in connection with the resolution.

10. **Term:** The term of this Scope of Work shall remain in effect for a period of one (1) year from the last date written below. Thereafter, unless terminated earlier as set forth herein, this Scope of Work shall automatically renew for consecutive one (1) year terms, until either party provides notice of its intention not to renew the Scope of Work to the other party with at least four (4) months prior written notice from the expiration date.

11. **Termination:** Either Party may terminate this Agreement upon thirty (30) days' prior written notice; except that Ryder may terminate this Agreement at any time immediately on written notice to Carrier by reason of: (a) Carrier's Permits being threatened, cancelled, suspended or revoked; (b) Carrier's material breach of this Agreement; (c) any adverse legislation, order, or rule of any public authority; (d) in the Ryder's sole discretion, the Services under this Agreement are unsatisfactory to Ryder; (e) Carrier files a voluntary petition in bankruptcy, shall have made an assignment for the benefit of creditors, shall have been involuntarily adjudicated bankrupt by any court of competent jurisdiction, or if a receiver shall have been appointed for Carrier; and (f) Carrier fails to obtain and/or maintain the insurance required hereunder. In the event Carrier fails to notify Ryder of any of the events in items (a) through (f) above, Carrier waives all amounts due from Ryder for the Services provided from the date and time of the occurrence of such event described in items (a) through (f) until which time such occurrence/event is removed or resolved. Notwithstanding the above, this Agreement will immediately terminate without notice upon issuance of an "unsatisfactory" or "conditional" safety rating to Carrier by the DOT FMCSA, or for issuance of an out of service order from any public jurisdiction based on Carrier's BASIC SCORES, whether notification thereof has or has not been provided to Ryder. Failure of Ryder to provide notice in accordance herein shall not in any manner affect immediate termination of this Agreement and any continued operation by Carrier in the absence of notification shall not constitute a waiver by Ryder of said obligation or termination, but will constitute a waiver by

~~Carrier of Rates due for any such Services provided after receipt of the "unsatisfactory" or "conditional" safety rating. Ryder may terminate this Agreement upon thirty (30) days' prior written notice to Carrier; except that Ryder may terminate this Agreement at any time immediately on written notice to Carrier by reason of: (a) Carrier's Permits being threatened, cancelled, suspended or revoked; (b) Carrier's material breach of this Agreement, including, but not limited to, Carrier's failure to comply with Sections 2, 4.8 and/or 4.9; (c) any adverse legislation, order, or rule of any public authority; (d) in the Ryder's sole discretion, the Services under this Agreement are unsatisfactory to Ryder; (e) Carrier files a voluntary petition in bankruptcy, shall have made an assignment for the benefit of creditors, shall have been involuntarily adjudicated bankrupt by any court of competent jurisdiction, or if a receiver shall have been appointed for Carrier; or (f) Carrier fails to obtain and/or maintain the insurance required hereunder. In the event Carrier fails to notify Ryder of any of the events in items (a) through (f) above, Carrier waives all amounts due from Ryder for the Services provided from the date and time of the occurrence of such event described in items (a) through (f) until which time such occurrence/event is removed or resolved. Notwithstanding the above, this Agreement will immediately terminate without notice upon issuance of an "unsatisfactory" or "conditional" safety rating to Carrier by the DOT FMCSA, or for issuance of an out of service order from any public jurisdiction based on Carrier's BASIC SCORES, whether notification thereof has or has not been provided to Ryder. Failure of Ryder to provide notice in accordance herein shall not in any manner affect immediate termination of this Agreement and any continued operation by Carrier in the absence of notification shall not constitute a waiver by Ryder of said obligation or termination, but will constitute a waiver by Carrier of Rates due for any such Services provided after receipt of the "unsatisfactory" or "conditional" safety rating. After the first year of the Agreement, Carrier may terminate this Agreement upon ninety (90) days prior written notice to Ryder.~~

12. Obligations upon Termination: Upon the termination date, Carrier shall at its sole cost and expense:

- return any and all Ryder property to Ryder;
- destroy or return to Ryder all confidential information provided to Carrier by Ryder or its customers, agents, or affiliates; and
- reasonably cooperate with Ryder and Ryder's customers to transition the Services to the carrier(s) designated by Ryder.

13. **Insurance:** Throughout the term of this Scope of Work, Carrier shall ~~obtain and~~ continuously maintain the following insurance:

(a) Commercial General Liability Insurance: Shall include bodily injury, property damage, personal and advertising injury, and contractual liability coverages, with coverage limits of \$1,000,000, each occurrence, with products and completed operations endorsements per CG 2026 and CG2037 or its equivalent, written on an "occurrence" policy form. The policy shall have no fire or water damage sub-limits or exclusions. There shall be no exclusion, limitation nor endorsement contained in the policy that restricts or limits contractual liability coverage or completed operations coverage.

(b) Motor Vehicle Liability Insurance: Shall cover any auto used, involved with or in any way relating to the Services, including but not limited to all owned, non-owned and hired

vehicles, with coverage limits of \$1,000,000, per occurrence, and include bodily injury, and property damage, with endorsements per CA2048 or its equivalent. Motor vehicle liability insurance shall not include any mileage restrictions.

(c) **Cargo/Motor Truck Cargo Insurance:** Shall provide an all risk broad form cargo liability insurance With a minimum cover-age limits of \$100,000 per standard trailer, per occurrence, without warranties that restrict coverage. The policy may not exclude coverage for an unlocked, unattended vehicle or for a vehicle lacking a GPS locator or other theft prevention device.

(d) **Workers' Compensation and Employer's Liability Insurance:** Shall afford Worker's Compensation coverage limits as required by Applicable Law or, in the alternative, occupational accident insurance where allowed by state law and Ryder, and Employer Liability Insurance in an amount not less than \$1,000,000 for each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease, as well as insurance required under any disability benefits, and unemployment laws and regulations for all those employed by Carrier in connection with Carrier's business, operations and the Services, and shall make or withhold all necessary payments in connection therewith. In the event Carrier is not required to carry Worker's Compensation insurance, Carrier shall obtain and maintain occupational accident insurance in an amount of not less than \$1,000,000. Owners may not opt out of or be excepted from the coverage required in this Section 14(d).

In no event shall Carrier's deductible amount for any of the coverages listed above exceed \$1,000. In accordance with Section 6.3 of the Agreement, Carrier shall furnish a Certificate of Insurance to Ryder and to Ryder's designated representative.

Carrier will obtain an endorsement stating that each additional insured receive no less than thirty (30) days advance notice of cancellation or nonrenewal coverage, and will have the same rights as the named insured in the event of cancellation.

**14. Reserve Account:** Carrier agrees to establish a reserve account with Ryder (the "Reserve Account") prior to proving Services under this Agreement in the principal amount of Two Thousand Five Hundred Dollars (\$2,500.00) (the "Principal Amount"). If at any time during the term of this Agreement, the Reserve Account falls below the Principal Amount, Carrier authorized Ryder to deduct from payments due to Carrier the amount necessary to replenish the Principal Amount. The Reserve Account shall be held by Ryder for the purpose of insuring Carrier's compliance with its obligations of the Agreement, this Scope of Work and any other obligations of Carrier to Ryder or agreements Carrier has entered with Ryder. The Reserve Account may be used at any time at Ryder's sole discretion, to pay amounts the Carrier owes to Ryder. Ryder may commingle all amounts in the Reserve Account with Ryder's general fund. The Reserve Account shall not bear interest and any interest that is earned shall be the property of Ryder. The balance remaining in the Reserve Account, less applicable deductions and setoffs, shall be returned to Carrier ninety (90) days after termination of the Agreement. Ryder's use, or post-termination return of the remaining funds in the Reserve Account to Carrier, shall not constitute a waiver of Ryder's right to recover at law, equity or by the terms of the Agreement or this Scope of Work, any amounts due to Ryder that had not otherwise been satisfied through the Reserve Account, for whatever reason.

IN WITNESS WHEREOF, the authorized representative of each Party hereto has signed this Scope of Work, to be effective on the last date written below.

**RYDER LAST MILE, INC**

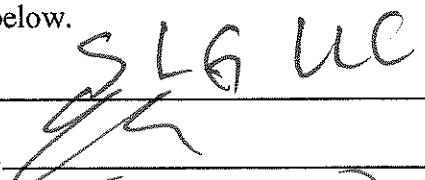
Signature: 

Print Name: Robert Ferreira

Title: GLM

Date: 12/20/22

Carrier: SLG LLC

Signature: 

Print Name: E LEANO

Title: OWNER

Date: 12 20 22

**Schedule 1**  
**QUALIFICATION STANDARDS OF CARRIER PERSONNEL**  
**FURNISHED UNDER THE AGREEMENT**

**Background Investigation**

Carrier agrees to abide by Ryder's background check process, which will be signed and executed by such document under separate cover and will be fully incorporated herein.

Ryder will arrange for a background check for all Carrier Employees assigned to provide services under this Agreement, which will be performed in compliance with applicable law and Ryder policy. Carrier agrees that it will bear the cost and expense of the background check, which may include a criminal records search, a social security number verification, and other items as needed. Ryder's requirements are based on the nature of the company's business operations and customer requirements as well as the access that Carrier Employees have to our employees, the confidential and proprietary information of Ryder and its customers, and the residences of customers of Ryder's clients.

A previous conviction is not automatic disqualification from assignment. Depending on a variety of factors (e.g., the nature of the position; the nature of the conviction the nature of the crime and relationship to the duties of the position sought; age of the candidate when the illegal activity occurred), the Carrier Employee may be eligible for assignment with Ryder despite prior convictions and/or charges.

**Disqualifying Crimes and Conditions for Carrier Employee Drivers**

Drivers must be qualified to operate commercial motor vehicles. According to the Federal Motor Carrier Safety Act ("FMCSA") regulations, 49 CFR § 383.5, 391.15, and other applicable law, the commission of certain offenses by drivers mandate an automatic disqualification. When applicable, the FMCSA qualifications must be followed. Some but not all of the disqualifications proscribed by law for Drivers are listed below:

One-year Disqualifications: A driver is disqualified for not less than one year<sup>1</sup> for a first-time conviction on the following offenses:

- Driving under the influence of alcohol or any drugs;
- Driving with an alcohol concentration of .04 or more while operating a commercial motor vehicle;
- Leaving the scene of an accident;
- Using a commercial vehicle in the commission of a felony;
- Refusing to take a blood-alcohol test; leaving the scene of an accident;
- Using a commercial motor vehicle to commit a felony;
- Driving a commercial motor vehicle with a suspended license as a result of prior violations;
- Causing a fatality through the negligent operation of a commercial motor vehicle.

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<sup>1</sup> The disqualification period is three years for the following crimes if the driver was operating a commercial motor vehicle transporting hazardous materials.

Lifetime Disqualifications: A second conviction or second refusal to be tested of any combination of the above crimes results in a lifetime disqualification under federal law. Other lifetime disqualifications include:

- Using a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing drugs;
- Using a commercial motor vehicle in the commission of a felony involving an act or practice of severe forms human trafficking.

60 And 120-Day Disqualifications: Certain traffic violations and convictions disqualifies a commercial motor vehicle driver, including 60-day disqualifications for a second offense of any of the below and 120 day disqualifications for any third offense, including:

- Speeding excessively (15 mph or more over the speed limit);
- Driving recklessly;
- Making improper or erratic traffic lane changes;
- Following too closely;
- Violating state or local laws in connection with a fatal accident;
- Driving without the appropriate commercial driver's license;
- Violation of other local or state laws such as texting while driving.

If a criminal conviction is generally related to the crime specified above, individuals may be disqualified from providing services.

Ryder reserves the right to disqualify any individual with a criminal conviction not listed above based upon business reasons and risk to Ryder and its customers. Ryder reserves the right to amend this list or its standards at any time and will communicate such changes in whatever manner is deemed appropriate. The above list of criminal convictions is intended to be illustrative and not comprehensive.

### **Drug and Alcohol Testing**

Carrier agrees that at its sole cost and expense that will implement the following testing procedures as part of its employee security program and in accordance with applicable DOT standards:

(a) Drug Testing: Carrier shall establish a program that provides testing for prohibited drugs in the following circumstances: pre-employment, post-accident, reasonable suspicion, random and return to duty/follow-up. When administering a drug test, the Carrier agrees to ensure that at a minimum, the following drugs are tested for: marijuana, cocaine, opiates, amphetamines, and phencyclidine.

(b) Alcohol Testing: Carrier shall establish a program that provides for testing of the presence of alcohol in the Carrier Employees' body under the following circumstances: post-accident, reasonable suspicion, random and return to duty/follow-up. Carrier shall prohibit an employee, while having a blood alcohol limit of 0.04 or greater, from performing or continuing to perform any Services under the Agreement.

A list of Carrier Employees performing Services under this Agreement and the results of their drug and alcohol testing shall be provided to Ryder by Carrier upon Ryder's written request, or in any event at least annually to insure Carrier's compliance.

**Identification Badges**

Carrier agrees that it shall provide proper identification for its Carrier Employees who have direct contact with the public when performing Services under this Agreement. All Carrier Employees shall wear on their person a contractor-specific photo identification badge ("ID Badge") supplied by Ryder at all times while engaging in Services under this Agreement. Carrier must return the ID Badges of its Carrier Employees that may for whatever reason cease to perform Services under this Agreement within 10 days of such cessation. Carrier shall notify Ryder immediately if ID Badges are lost or stolen. The cost of replacement ID Badges shall be the responsibility of Carrier.

## Appendix B

### **CONSENT TO CONDUCT BUSINESS USING ELECTRONIC METHODS**

1. Pursuant to Regulatory Guidance Concerning Electronic Signatures and Documents, 74 Fed. Reg. 411 (Jan. 4, 2011), issued by the Federal Motor Carrier Safety Administration ("FMCSA"), Ryder Last Mile, Inc. ("Ryder Last Mile") and the undersigned carrier ("CARRIER") hereby consent and agree to conduct business using, to the extent either party elects to do so in a particular instance, one or more of the following methods:

**1(a). Captured Image Method.** Under the Captured Image Method, an image of a scripted name or legal mark is created using a stylus on an electronic pad, and that image is then used to populate an electronic version of the document to be signed electronically by Ryder Last Mile, CARRIER, or both, as authorized by FMCSA in its guidance in response to Question 6 at 74 Fed. Reg. 411, 413.

**1(b). Fax or Scan/Photograph-and-Email Manual Signature.** Under the Fax or Scan/Photograph-and-Email Method, a document on which a party has placed his, her, or an authorized representative's manual signature which is faxed — or scanned or photographed and then emailed or otherwise electronically transmitted — to the other party at the fax number or email address, respectively, shown in the signature block after the main text of this Agreement.

**1(c). Email Method.** Under the Email Method, electronic signatures are accomplished through the parties' use of an Internet-based electronic-signature service such as DocuSign® or Digital Ink® and/or through the exchange of email correspondence in a manner that identifies and authenticates CARRIER as the sender of the email correspondence (in other words, by CARRIER's furnishing to Ryder Last Mile in advance CARRIER's email address and appending to the email correspondence the last four digits of CARRIER's Taxpayer Identification Number or another form of identification known only to CARRIER).

**1(d). Communications Equipment Method.** Under the Communications Equipment Method, electronic signatures are accomplished via the electronic Device, described in Section 6(j) of this Agreement, in a manner that identifies and authenticates CARRIER as the user of the Device and the source of the electronic communication (in other words, by CARRIER's or CARRIER's driver's logging onto the Device with a uniquely assigned number and electronically signing messages by appending to the electronic communication the last four digits of CARRIER's Taxpayer Identification Number or another form of identification known only to CARRIER).

2. This consent encompasses the use of electronic methods to transmit and effect the signature of any document, including, without limitation, any supplement, modification, addendum, amendment, notice, consent and/or waiver, required by this Agreement or required by FMCSA regulations to be generated and maintained (or exchanged by private parties), including, without limitation, driver applications, driver histories, and other qualification records, leases formed under 49 C.F.R. Part 376, driver-vehicle inspection reports, and records of duty status.

3. The parties agree that when CARRIER uses any of the electronic methods described in Section 1 of this Appendix to accomplish electronic signatures, the chosen method: (1) identifies and authenticates CARRIER as the source of the electronic communication; (2) indicates

CARRIER's approval of the information contained in the electronic communication; and (3) produces an electronic document with the same integrity, accuracy, and accessibility as a paper document or handwritten signature.

**THIS APPENDIX is agreed to by the undersigned parties as of the latest date set forth below.**

**RYDER LAST MILE, INC.:**

**CARRIER:** SLG :

Signature Robert L. Ferrera

By: Robert Ferrera

Title: GLM

Date: 12/20/22

Signature EL

By: E LEANO

Title: OWNER

Date: 12 20 22

# **EXHIBIT B**



✓ 12/29/2023

\$5,016.53

Summary

More Details

**Commissions**

Delivery Expense - \$2,645.62

LEANO, EUDIER

Special Fee - \$230.43

LEANO, EUDIER

Fuel Surcharge - \$289.38

LEANO, EUDIER

Accessorials - \$1,956.22

LEANO, EUDIER

**Deductions**

Administrative (-\$100.00)

Deductions -

LEANO, EUDIER

Openforce Fee - (-\$5.12)

LEANO, EUDIER

**Commission Total** \$5,121.65**Deduction Total** (-\$105.12)**Net Total** \$5,016.53

Settlements



Documents



Enrollments



Subcontractors



More



✓ 01/05/2024

**\$4,565.45**

Summary

More Details

**Commissions**

Delivery Expense - \$2,440.57

LEANO, EUDIER

Special Fee - \$510.93

LEANO, EUDIER

Fuel Surcharge - \$275.63

LEANO, EUDIER

Accessorials - \$1,585.60

LEANO, EUDIER

**Deductions**

Claims Deductions - (-\$242.47)

LEANO, EUDIER

Openforce Fee - (-\$4.81)

LEANO, EUDIER

**Commission Total** \$4,812.73**Deduction Total** (-\$247.28)**Net Total** **\$4,565.45**

Settlements



Documents



Enrollments



Subcontractors



More

# **EXHIBIT C**



SMART. DEDICATED. EFFECTIVE.

*Aashish Y. Desai – Managing Partner*  
*www.desai-law.com | aashish@desai-law.com*

April 2, 2024

**VIA CERTIFIED U.S. MAIL & ONLINE FILING**

California Labor and Workforce  
Development Agency  
800 Capitol Mall, MIC-55  
Sacramento, CA 95814

Re: Employer:           Ryder Last Mile, Inc.  
Re: Employee:        Eudier Leño, on behalf of himself and all other aggrieved  
                                 employees.

Dear Sir/Madam:

This office represents Mr. Leño. Mr. Leño works as a truck driver for Ryder Last Mile, Inc. (“Ryder”). He has worked for them since January 2020 and drives out of the Ontario facility. Mr. Leño, on behalf of himself and all other aggrieved employees, alleges that Ryder misclassified him and other drivers as independent contractors when in fact, they are employees. Thus, Mr. Leño has claims for violations of the California Labor Code and California’s Industrial Commission Wage Orders, including (1) misclassifying its drivers as independent contractors instead of employees, (2) failing to reimburse its drivers for necessary and reasonable expenses in violation of Labor Code § 2802 (3) failure to provide meal and rest periods in violation of Labor Code §§ 226.7 and 512, and Wage Order 9-2001, ¶¶ 11, 12; (4) failure to compensate for all hours of work performed in violation of Labor Code §§ 226.2, 223, 510, 558, 1194, 1194.2, 1197, 1198 and Wage Order 9-2001, ¶4; (5) failure to pay overtime hours wages in violation of Labor Code §§ 500, 510; (6) failure to provide itemized pay statements and/or maintain required wage and time records in violation of Labor Code § 226, 226.2 and Wage Order 9-2001, ¶7-B; and (7) failure to timely pay its drivers full wages upon termination or resignation in violation of Labor Code § 201-203.

Accordingly, this letter is notice, and a request, pursuant to California Labor Code § 2699.3 that your agency investigate the claims in this impending civil action. If the agency does not intend to investigate the alleged violations, we specifically request notification so that we can file our civil action to include our PAGA claims.

This action is brought on behalf of all California-based truck drivers and other aggrieved employees to recover unreimbursed business expenses, unlawfully withheld wages for meal and

Re: Employer:           Ryder Last Mile, Inc.  
Re: Employee:          Eudier Leño

rest break violations, unpaid wages for all hours worked, unpaid overtime, payroll reporting violations, waiting time penalties, as well as other statutory penalties and damages owed to the plaintiffs employed by, or formerly employed by Ryder.

In September 2019, AB 5 was signed into law to codify the test for determining whether a worker is properly classified as an independent contractor. The law arose out of *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (2018), a trucking case with analogous facts. In that case, the California Supreme Court first adopted the ABC test now reflected in AB 5. Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- The worker performs work that is outside the usual course of the hiring entity's business; **and**
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Importantly, AB 5 places the burden of proving these factors on the hiring entity. Ryder cannot meet its burden as explained more fully below. To satisfy prong B of the "ABC Test" the hiring entity (Ryder) must establish that the workers perform work that is outside the usual course of the hiring entity's business. Ryder is in the delivery business so it cannot meet this requirement for its drivers.

Ryder Last Mile, Inc. ("Ryder") is a third-party logistics business that provides delivery and logistics services to companies throughout the nation. According to Ryder's website, Ryder has 637 locations throughout the United States. Ryder is headquartered in Ohio but maintains offices and is incorporated in California.

Ryder hires drivers in California to operate local delivery service to their clients. Drivers primary job duties are all the same – make deliveries to Ryder's clients according to Ryder's protocols and procedures. The deliveries consist mostly of furniture, appliances, and fitness equipment. Since at least 2020, Ryder has uniformly required its drivers to sign agreements called "Master Services Agreements," ("MSA") that purports to classify its drivers as "independent contractors." A true and correct copy of the MSA is attached to this letter as **Exhibit A**. However, this 27-page document is just one example how Ryder

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Re: Employee:          Eudier Leño

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exercises a high level of control and direction over its drivers, showing that in fact, its drivers are employees, not independent contractors.

The MSAs obligate drivers to follow strict Ryder protocols and policies when making deliveries. Ryder requires all its drivers to comply with “Ryder Instructions.” MSA Sect. 3.1. For example, Ryder drivers are required to wear a mask, shoe covers, and gloves at each delivery. Drivers are also required to lay out blankets and take pictures of the items being delivered upon completion. Ryder also requires all its drivers to bear the financial responsibility for the products being delivered. MSA. Sect. 3.2 Ryder forces drivers to assume liability for invoices costs for Ryder’s customers, and transportation costs, as well as the cost of lost, damages, stolen, delayed, or vandalized products. MSA Sect. 7.1

Ryder further states that drivers must “promptly provide information to Ryder on an ongoing basis for activities relating to the Product and Services.” MSA Sect. 3.7 Ryder closely tracks the drivers throughout the day. It requires drivers to download an app on their personal cell phones called DispatchTrack which has a GPS to track the drivers routes all day. The app contains the routes for the day and the order of stops. Ryder requires its drivers to complete the routes in the order listed. Drivers are not allowed to rearrange the order of the stops. To ensure drivers follow their routes, Ryder charges drivers \$45 if they disable the GPS on the app. Ryder requires drivers to provide it with “tracking information and regular updates with tracking/GPS technologies, which are approved by Ryder for such communications.” MSA Sect. 3.7. Ryder keeps such close tabs on its drivers that upon Ryder’s request, drivers are required to respond within one hour of Ryder’s request for information. *Id.*

Furthermore, Ryder’s drivers do not have control over their routes or their compensation. Drivers are not allowed to choose their own routes or negotiate the rates of payment for the routes. MSA Sect. 4.1. Ryder simply assigns routes to its drivers with predetermined rates. Ryder retains the right to control drivers’ schedules, routes, what order drivers must complete their stops, drivers’ appearance, and which customers its drivers deliver to. Drivers do not separately negotiate with Ryder’s client and makes deliveries based on Ryder’s contractors with its clients. Mr. Leño has repeatedly asked for an explanation of how he is paid, and a breakdown of the various routes and their rate of pay but Ryder has not given him one. He understands that each route pays a minimum of \$850 but he is unable to discern how else he is paid.

All drivers, including Mr. Leño, are required to go through Ryder’s on-boarding process when they are first hired by the company. Once they start working, drivers are required to show

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up to work early at their designated terminal to attend a mandatory Ryder “stand-up” meeting. If drivers miss this meeting, Ryder charges them \$45.

Ryder also requires drivers to absorb several business expenses out-of-pocket. As explained above, this includes hiring insurance, any property damages or lost property. Ryder also requires drivers to “furnish all equipment and supplies needed for the Services, which may include all such equipment and supplies shall be safe secure, lawful, clean, odor free, in good working order and repair, dry, watertight, free of contamination and infestation, and in sufficient and in sufficient quantities in order to safely and efficiently provide the services.” MSA Sect. 3.3. Ryder inspects their trucks regularly, and if the truck does not meet Ryder’s standards (i.e., paperwork is in the manifest, truck is not clean), Ryder charges drivers \$45. Ryder also requires drivers to hire employees who drivers must pay. Ryder also requires drivers to purchase and wear a uniform of all blue attire, and black shoes. If drivers do not wear this uniform, Ryder charges them \$45. Mr. Leño was once charged \$45 when he wore cargo pants instead of the required blue pants.

Drivers are scheduled to (and do) work 12-14 hours per day, 5 days a week. Drivers like Mr. Leño work up to 60-70 hours a week. They are not paid overtime for any of these hours. This packed schedule also means that drivers cannot realistically work for any other delivery company despite being classified as “independent contractors.” Drivers’ tight schedules also means that they do not have an opportunity to stop and take compliant meal and rest breaks, nor does Ryder build these into drivers’ schedules.

To obfuscate their illegal scheme, Ryder does not provide drivers with itemized wage statements showing the total hours worked, applicable rates, overtime hours and accompanying rates. Drivers are simply paid weekly in a lump sum, and their payment information can only be accessed on-line. In the portal, the payments only show general categories such as “delivery expense,” “special fee,” “fuel surcharge,” and “accessorials.” It also shows deductions titled “administrative deductions,” and “openforce fee.” There is no breakdown of the rate of pay for routes, how many routes were done, any overtime, and any meal or rest break premiums. *See* exemplar attached as **Exhibit B**. The general descriptions make it basically impossible for drivers to determine if they are being paid properly. Ryder also fails to pay all compensation due at the termination of employment.

By misclassifying its drivers as independent contractors, Ryder evades its obligations under California law to pay its drivers for all hours worked, provide them meal and rest breaks, pay them overtime, reimburse them for all necessary expenses, and otherwise provide them the benefits of their rights as employees.

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**Unlawful Failure to Pay the Minimum Wage**

Ryder has violated California Labor Code §§ 1182.11, 1182.12, 1194, 1197 and 1197.1 by failing to pay drivers the minimum wage. Labor Code §§ 1182.11, 1182.12, 1197 requires that drivers be paid the minimum wage for all hours worked (\$15.50 per hour in 2023, and \$16.00 per hour in 2024). Labor Code § 1194 provides that the right to minimum wage cannot be waived.

Drivers are paid a fixed rate for their routes. However, they work approximately 12-14 hours day, beginning with morning meetings, preparing for their route, and loading equipment. Drivers then must return to Ryder's facilities to complete paperwork and return any undelivered equipment. In addition, drivers must pay out of pocket for business expenses such as the cost of leasing their truck, maintenance and repairs of trucks, using their personal cell phones. Ryder also deducts certain costs from drivers' wages for fuel, penalties for failing to comply with its uniform rules, and damages merchandise. The combination of long hours, deductions, and requiring drivers to pay substantial business expenses, drivers' pay falls below the minimum wage.

In addition, Ryder's fixed rate payments do not account for all hours the drivers work including pre- and post- delivery work such as morning meetings, training for assembling equipment and installing appliances, completing paperwork, returning undelivered merchandise, and other unpaid work. Ryder does not separately compensate drivers for this required work that can take a few hours a day.

The failure to compensate for all hours of work performed violates, *inter alia*, §§ 1182.11, 1182.12, 1194, 1197 and 1197.1 and Wage Order 9-2001.

Drivers are entitled to recover such amounts plus interest thereon, attorneys' fees and costs. Ryder is also liable for civil penalties pursuant to Labor Code §§ 558 and 2698 as follows:

- (1) For any initial violation, \$50.00 for each driver for each pay period during which the driver was not provided the minimum wage for all the work performed;
- (2) For each subsequent violation, \$100.00 for each driver for each pay period during which the driver was not provided the minimum wage for all the work performed.

Re: Employer:       Ryder Last Mile, Inc.  
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### **Unlawful Failure to Pay Wages Due**

Ryder has violated California Labor Code §§ 204, 223, 226.2, 510, 558, 1194, and 1197. Labor Code § 204 establishes the fundamental right of employees in the State of California to be paid wages in a timely fashion for their work. Labor Code § 1197 makes it unlawful to pay employees less than the wage set by the IWC. Labor Code § 1198 makes it unlawful to employ persons under conditions prohibited by the applicable IWC Wage Orders. Under Section 4 of IWC Wage Orders 9-2001, 9-2000, and 9-1998, which apply to transportation establishments such as Ryder, Plaintiffs must be paid at least a minimum wage (or contract rate) for each hour worked. Ryder has uniformly required drivers to perform certain work without any compensation whatsoever.

Ryder's fixed rate payments to drivers for certain routes does not account for all hours drivers work including pre- and post- delivery work such as morning meetings, training for assembling equipment and installing appliances, completing paperwork, returning undelivered merchandise, and other unpaid work. Ryder does not separately compensate drivers for this required work that can take a few hours a day.

The failure to compensate for all hours of work performed violates, *inter alia*, Labor Code §§ 226.2, 223, 510, 558, 1194, 1194.2, 1197, 1198 and Wage Order 9-2001, ¶4.

Drivers are entitled to recover such amounts plus interest thereon, attorneys' fees and costs. Ryder is also liable for civil penalties pursuant to Labor Code §§ 558 and 2698 as follows:

- (1) For any initial violation, \$50.00 for each driver for each pay period during which the driver was not provided wages for all the work performed;
- (2) For each subsequent violation, \$100.00 for each driver for each pay period during which the driver was not provided wages for all the work performed.

### **Unlawful Failure to Indemnify Employees for Necessary Expenditures**

Ryder has also failed to indemnify Plaintiffs and other drivers for certain expenditures required for work. Labor Code § 2802-04; Labor Code §§ 221-23, 558. Labor Code § 2802 requires employers to indemnify their employees for all necessary expenditures incurred as a direct consequence of the discharge of his or her duties, or at the directions of the employer.

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Ryder drivers incurred the following expenses in direct discharge of their duties and at the direction of Ryder: (1) truck rental/lease, (2) fueling, (3) vehicle maintenance and repairs, (4) tolls, (5) vehicle insurance, (6) hiring a “helper,” (7) cell phones for use of the DispatchTrack and communicating with Ryder, and (8) costs for loss or damaged equipment/product. This list is not exhaustive.

Ryder is liable for the costs of these expenditures plus interest, and attorneys’ fees. Ryder is also liable for civil penalties pursuant to 2698 as follows:

- (1) For any initial violation, \$50.00 for driver for each pay period during which the driver was not paid for all necessary expenditures; and
- (2) For each subsequent violation, \$100.00 for each driver for each pay period during which the driver was not paid for all necessary expenditures.

#### **Unlawful Deductions from Drivers’ Wages**

Ryder makes unlawful deductions from drivers’ wages. Labor Code §§ 204, 218, 218.6, 223, and 400-410, IWC Wage Order No. 9. Under Labor Code §§ 204, 221, and Wage Order 9, drivers are entitled to receive all wages earned for each pay period without any deductions except for those legally permissible. Labor Code § 223 makes it unlawful for employers to secretly pay a lower wage scale while purporting to pay a wage scale designated by statute or contract. Labor Code §§ 400-410 states employers are not entitled to a set-off of debts owed by their employees against wages due to them upon termination. IWC wage order No. 9 provides the narrow circumstances under which an employer can make deductions from employees’ wages. These are 1) cash shortage, 2) breakage, or 3) loss of equipment if the employer can show the shortage, breakage, or loss was the result of employee’s gross negligence or dishonest or willful act.

Defendants have violated these laws by unlawfully taking deductions from drivers’ wages for ordinary business expenses such as fuel, penalties for uniforms, penalties for failure to comply with Ryder’s policies for vehicle maintenance, and claims for lost or damaged products.

Ryder is liable for paying the wages that should have been paid but for the unlawful deductions. Ryder is also liable for civil penalties pursuant to 2698 as follows:

Re: Employer:       Ryder Last Mile, Inc.  
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- (1) For any initial violation, \$50.00 for driver for each pay period during which the driver wages were subject to unlawful deductions; and
- (2) For each subsequent violation, \$100.00 for driver for each pay period during which the driver wages were subject to unlawful deductions.

**Unlawful Failure to Provide Uninterrupted Off-Duty Meal and Rest Periods**

Drivers were regularly compelled to work in excess of five and ten hours a day without being afforded at least half-hour meal periods in which they were completely relieved of all duties as required by Labor Code §§ 226.7, 512, and 558. The drivers were also regularly permitted and compelled to work over a four-hour period (or a major fraction thereof) without Ryder authorizing and permitting them to take paid ten-minute rest periods in which they were completely relieved of all their duties as required by Labor Code § 226.7.

Ryder required its drivers to adhere to its tight and demanding route schedules which sometimes include assembly and appliance installation. Therefore, drivers rarely if ever had the opportunity to take an uninterrupted meal or rest break. Rather drivers would simply eat on the road or miss meal and rest breaks entirely. Because Ryder misclassified its drivers as independent contractors, it also did not keep records or missed meal and rest breaks and did not pay its driver premiums for meal and rest breaks.

Ryder is also liable to all drivers for one hour of additional pay at the regular rate of compensation for each workday that the full and uninterrupted, off-duty rest and meal period were not provided.<sup>1</sup> Ryder is also liable for civil penalties pursuant to Labor Code §§ 558 and 2698 as follows:

- (1) For any initial violation, \$50.00 for each driver for each pay period during which the driver was not provided proper meal and rest breaks; and
- (2) For each subsequent violation, \$100.00 for each driver for each pay period during which the driver was not provided proper meal and rest breaks.

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<sup>1</sup> Ryder, more specifically, is liable for two hours of additional pay per day for each driver since the drivers are entitled to compensation for the (1) missed meal period, and (2) missed rest period.

Re: Employer:       Ryder Last Mile, Inc.  
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### **Unlawful Failure to Pay Overtime**

As explained above, Ryder schedules its drivers to work 12-14 hours per day, 60-70 hours per week. Because it misclassifies its drivers as independent contractors, Ryder does not pay its drivers for any overtime worked and instead, only pays them a flat, fixed rate for the route.

By failing to keep accurate time records, specifically any records showing the overtime hours worked and the proper overtime rate, Ryder has made it difficult to calculate the precise overtime compensation due. As a result, its drivers and other aggrieved employees have been deprived of overtime compensation and are entitled to recover such amounts, plus interest thereon, attorney's fees and costs. Furthermore, Ryder is liable for civil penalties pursuant to Labor Code §§ 558 and 2698, *et seq.* as follows:

- (1) For any initial violation, \$50.00 for each class member for each pay period during which the drivers were not paid overtime; and
- (2) For each subsequent violation, \$100.00 for each class member for each pay period during which the drivers were not paid overtime.

### **Failure to Furnish Accurate Wage Statements**

Labor Code § 226(a) requires employers to furnish each employee with a statement that accurately reflects gross wages earned, the total number of hours worked, and the net wages earned. Labor Code § 226(b) provides that if an employer fails to provide a statement itemizing, *inter alia*, the total hours worked by the employee, then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial violation and \$100.00 for each subsequent violation, up to \$4,000.00.

Ryder intentionally failed to furnish and continue to intentionally fail to furnish each driver with timely, itemized statements that accurately reflect the gross wages earned, the total number of hours worked, all applicable rates of pay, overtime pay, meal and rest break premiums, and the net wages earned as required. Drivers are simply paid weekly in a lump sum, and their payment information can be accessed on-line. In the portal, the payments showing general categories such as "delivery expense," "special fee," "fuel surcharge," and "accessorials." It also shows deductions titled "administrative deductions," and "openforce fee."

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There is no other breakdown of the compensation so drivers cannot discern how they are paid and if they are being paid properly. *See Exh. B.*

Ryder is additionally liable for civil penalties pursuant to Labor Code §§ 226.3 and 2698 in the amount of \$250.00 for each Plaintiff per initial violation and \$1,000.00 for each Plaintiff per subsequent violation.

### **Waiting Time Penalties**

Labor Code § 201 requires an employer who discharges an employee to pay compensation due and owing to the employee immediately upon discharge. Labor Code § 202 requires an employer to promptly pay compensation due and owing within 72 hours of that employee's termination of employment by resignation or otherwise. California Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, then the employer is liable for waiting time penalties in the form of continued compensation up to 30 workdays.

Ryder failed and refused, and continues to willfully fail and refuse, to timely pay compensation and wages, including unpaid overtime pay and meal and rest break period pay to those drivers whose employment terminated as required. As a result, Ryder is liable for waiting time penalties, together with interest and attorneys' fees and costs under California Labor Code § 203.

### **Failure to Keep Required Payroll Records**

Ryder has violated Wage Order 9-2001, California Labor Code §§ 226 and 1174 by willfully failing to keep required payroll records showing the actual hours worked on a daily basis by the drivers. Ryder is liable for civil penalties pursuant to California Labor Code §§ 1174.5 and 2698 in the amount of \$500.00 per violation.

### **Conclusion**

Ryder is in direct violation of numerous California wage and hour laws. Under PAGA, drivers may seek penalties of \$100 per aggrieved employee, per pay period, and \$200 for each subsequent violation per aggrieved employee per pay period. Cal. Lab. Code § 2699(f)(2). We provide notice under the Labor Code Private Attorney's General Act of 2004 and specifically ask for an investigation; or if the agency does not intend to investigate the alleged violations, a letter

California Labor and Workforce  
Development Agency

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confirming the same so that we may file a complaint against Defendant for the violations discussed in this letter.

Should you require anything further or have additional questions, please do not hesitate to contact me.

Very truly yours,



Aashish Y. Desai  
Adrienne De Castro  
DESAI LAW FIRM, P.C.

AYD:sn  
Enclosures

**VIA CERTIFIED U.S. MAIL**

Cc:   Ryder Last Mile, Inc.  
      25127 33<sup>rd</sup> St.  
      Highland, CA 92346  
  
      Ryder Last Mile, Inc.  
      11669 NW 105 Street  
      Miami. FL. 33178  
  
      Corporate Creations Network Inc.  
      Corporate (1505)  
      7801 Folsom Blvd. #202  
      Sacramento, CA 95826

# EXHIBIT A

(concurrently submitted as 'Exhibit A' to  
this Complaint)

# EXHIBIT B

(concurrently submitted as ‘Exhibit B’ to  
this Complaint)

**From:** LWDA DO NOT REPLY lwdadonotreply@dir.ca.gov  
**Subject:** Thank you for submission of your PAGA Case.  
**Date:** April 2, 2024 at 2:48 PM  
**To:** sonia@desai-law.com

LR

4/2/2024

LWDA Case No. LWDA-CM-1020004-24  
Law Firm : Desai Law Firm, P.C.  
Plaintiff Name : Eudier Leano  
Employer: Ryder Last Mile, Inc.  
Filing Fee : \$75.00  
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_labor.ca.gov\\_Private-5FAttorneys-5FGeneral-5FAct.htm&d=DwlCaQ&c=euGZstcaTDIlvimEN8b7jXrwqOf-v5A\\_CdpqnVfiiMM&r=VEDciQDFEtqLBd2NVtVT7X567ZNdoD5QKBvQoFLpnNU&m=LI8jVThvTmIhyb66dox8gkkPmmjTRoJilGMaWuYF3vselw8nDNJDQY10sinOgwjU&s=QLkPSwv4tCC14d5-0GcQxlxqR1QaDmO7UhNq3n5syfU&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A__labor.ca.gov_Private-5FAttorneys-5FGeneral-5FAct.htm&d=DwlCaQ&c=euGZstcaTDIlvimEN8b7jXrwqOf-v5A_CdpqnVfiiMM&r=VEDciQDFEtqLBd2NVtVT7X567ZNdoD5QKBvQoFLpnNU&m=LI8jVThvTmIhyb66dox8gkkPmmjTRoJilGMaWuYF3vselw8nDNJDQY10sinOgwjU&s=QLkPSwv4tCC14d5-0GcQxlxqR1QaDmO7UhNq3n5syfU&e=)