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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

ANGEL CUELLAR, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

NEW BERN TRANSPORT
CORPORATION, a Delaware Corporation;
PEPSI-COLA SALES AND
DISTRIBUTION, INC., a Delaware
Corporation; PEPSICO, INC., a North
Carolina Corporation; and Does 1-10,
Inclusive,

Defendants.

Case No. STK-CV-UOE-2024-0008803
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Robert T. Waters
Department 11B

CLASS ACTION

**DECLARATION OF ISAM C. KHOURY IN
SUPPORT OF PLAINTIFF'S [UNOPPOSED]
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

Date: TBD
Time: 9:00 a.m.
Dept.: 11B

Complaint filed: July 25, 2024
Trial Date: Not set

1 I, Isam C. Khoury, declare as follows:

2 1. I am a Founding Partner at the law firm of Cohelan Khoury & Singer, co-counsel
3 of record for Plaintiff Angel Cuellar Noel in this action. I submit this declaration in support of
4 Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement. The
5 following facts are within my personal knowledge and if called to testify I could and would
6 competently testify to them.

7 2. I am a 1973 Hastings School of Law graduate and was admitted to the California
8 State Bar in 1974 and am admitted to practice in all state courts in California and in the all
9 federal courts in California, as well as the First Circuit Court of the State of Hawaii and the
10 United States Court of Appeals for Sixth Circuit.

11 3. In 1981, Timothy D. Cohelan and I formed Cohelan & Khoury, a Partnership of
12 Professional Law Corporations, and within a few years began to focus on class actions. Cohelan
13 & Khoury became Cohelan Khoury & Singer in 2009. Our firm represents plaintiffs in class and
14 representative action litigation, including wage and hour, labor and employment, antitrust,
15 consumer protection, construction defect and other public interest class and representative
16 actions.

17 4. I, along with Partner Diana M. Khoury, have been selected by our peers based on
18 ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern
19 California Super Lawyers Magazine for the years 2012 through the present. Michael D. Singer,
20 Managing Partner, was named to the Daily Journal 2012, 2013, and 2018 list of Top California
21 Labor and Employment Attorneys and selected to the Southern California Super Lawyers in
22 2010, 2012-2019. Mr. Singer was admitted as a fellow to the College of Labor and Employment
23 Attorneys in 2020. I am AV – Preeminent rated by Martindale-Hubbell, as are many attorneys
24 in our firm.

25 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
26 provide the Mandatory Continuing Legal Education activity entitled "Litigating California Class
27 Actions" and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D.
28 Cohelan, is the author of Cohelan on California Class Actions (1997-2026, updated annually),

1 part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing
2 author on the CEB publication California Wage and Hour Law: Compliance and Litigation
3 (2010-2026 updated annually), in which he wrote the opening chapter overview on California
4 Wage and Hour laws, including the public policy underpinnings for those laws, and the Private
5 Attorneys General Act (“PAGA”) Claim chapter. He is also a contributing author to the CEB
6 Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr.
7 Singer has served as a columnist for the California State Bar, Litigation Section on wage and
8 hour litigation and has contributed articles on wage and hour and class action issues through the
9 years to numerous California publications.

10 6. Prior to COVID-19, Mr. Singer typically lectured several times per year for
11 continuing education courses on wage and hour and class action issues at events in San Diego,
12 Orange County, Los Angeles, and San Francisco. For over twelve years, he has served as wage
13 and hour amicus co-chair and liaison for the California Employment Lawyers Association,
14 drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California
15 Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and
16 employment law since 2000, handling well over 300 wage and hour class and PAGA actions
17 and several individual labor cases. He has litigated several types of employment actions,
18 including complex ERISA employee welfare benefit plan cases, as well as wage and hour class
19 actions before Federal and State Courts in California. In 2014, Mr. Singer tried a wage and hour
20 class action involving claims for illegally deducted wages and unreimbursed expenses. *Dilts v*
21 *Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the trial court ruling in *Dilts*
22 finding state laws preempted by the FAAAA for truck drivers. Mr. Singer has participated in
23 over 50 appellate cases and argued writs and appeals before several California District Courts of
24 Appeal, arguing for plaintiffs on rehearing in *Brinker International Inc. v. Superior Court*
25 before the Fourth District Court of Appeal, as well as federal appeals in the Second, Third, and
26 Ninth Circuit Courts of Appeals. In addition, Mr. Singer has drafted numerous appellate briefs
27 as the appellant, respondent, or amicus curiae in employment class and individual actions. As
28 co-Class Counsel in *Brinker Restaurant Corp. v. Superior Court* [formerly reported at

1 (2008)165 Cal.App.4th 25], Mr. Singer argued before the Fourth District Court of Appeal in
2 May 2008 on transfer from the California Supreme Court, and co-authored the successful
3 Petition for Review.

4 7. Partner Maggie Realin worked for a certified appellate law specialist in San
5 Diego for five years. Subsequently, she was an associate at a San Diego consumer class action
6 firm, where she represented consumers in class actions against large corporations, specifically
7 in the area of deceptive food labeling. Ms. Realin then joined an employment class action firm
8 in 2013, where she focused on representing employees in wage and hour class actions. On
9 February 26, 2020, Ms. Realin was rated AV Preeminent by Martindale Hubbell. In 2024, Ms.
10 Realin joined Cohelan Khoury & Singer, where her practice continues to focus on employee-
11 side wage and hour class actions.

12 8. My firm has successfully tried class cases, obtained appellate reversals of class
13 certification denials (*e.g. Hicks v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908), and has
14 certified multiple wage and hour class.

15 9. As a part of our overall firm philosophy lawyers perform community service and
16 pro bono work. Firm volunteer work includes service through Legal Aid at Work, San Diego
17 Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of
18 San Diego. I am a past recipient of the Wiley W. Manuel Award for Pro Bono Service. Mr.
19 Singer has served on the Legal Aid at Work Board of Directors since 2011. Mr. Cohelan served
20 as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018, and currently sits
21 on the Board as past Chair. He completed 24 years of volunteer judicial service as a Judge Pro
22 Tem of the San Diego Superior Court. Since admission to the California Bar, Partner Diana M.
23 Khoury has been a member of the San Diego County Bar Association, Consumer Attorneys of
24 San Diego, Consumer Attorneys of California, and American Association for Justice serving
25 and chairing various committees through the years for these organizations. For six years from
26 2010 through 2015, Ms. Khoury served on the Board of Directors for Consumer Attorneys of
27 San Diego. Since 2013, Ms. Khoury actively serves on the Board of Directors for the San Diego
28 County Bar Foundation, the 501(c)(3) charitable arm of the San Diego County Bar Association

1 providing access to justice to the underserved and impoverished in the San Diego County
2 region. Our firm's pro bono victories include a settlement which prohibits the City of San Diego
3 from targeting homeless people for illegal lodging tickets under Penal Code Section 467(j).
4 (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer*
5 settlement had the effect of increasing the number of available shelter beds in San Diego.

6 10. Cohelan Khoury & Singer has been certified Class Counsel in the following
7 contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court
8 Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court
9 Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*,
10 Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND*
11 *HOURLY EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of
12 Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*,
13 United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v.*
14 *Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California
15 Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the
16 Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*,
17 Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United
18 States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les*
19 *Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-
20 30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and*
21 *PICS*, Los Angeles County Superior Court Case No. BC472891; *Gutierrez v. Save Mart*
22 *Supermarkets*, San Mateo County Superior Court Case No. CIV530955; *Wilcox v Albertsons*,
23 San Diego County Superior Court Case No. GIC833922; *Gonzalez, et al. v. Freedom*
24 *Communications, Inc. d/b/a The Orange County Register*, Orange County Superior Court Case
25 No. 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*, United States District Court,
26 Southern District of California Case No. 10CV0672 (FLSA Conditional Certification); *Hicks v.*
27 *Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No. B198414;
28 *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego County Superior Court

Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District Court, Central District of California Case No.11CV07196 (FLSA Conditional Certification); *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992; STEROID HORMONE PRODUCT CASES, Los Angeles County Superior Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*, United States District Court, Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of California Case No. 10CV0634; and *Weigle v. FedEx Ground Package System, Inc.*, United States District Court, Southern District of California Case No. 06CV1330, among others, as well as being appointed Class Counsel in connection with well over 200 class action settlements.

11. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has actively commenced, prosecuted and concluded numerous state and federal class and representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the resolution of over 200 such cases, including the following, which have received court approval:

(a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County

1 Superior Court Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A.,*
2 *Inc.*, Los Angeles County Superior Court Case No. BC577885, Hon. Elihu M. Berle; (c)
3 *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California
4 Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYs*, United States
5 District Court, Central District of California Case No. 18-cv-00415, Hon. David O. Carter; (e)
6 *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court Case No. BC472891,
7 Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County
8 Superior Court Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce*
9 *Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu
10 M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court
11 Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*,
12 Orange County Superior Court Case No. 2018-01017838; (j) *Klein v. Loomis Armored US,*
13 *LLC*, San Bernardino County Superior Court Case No. CIVDS1704547, Hon. David Cohn; (k)
14 *Laureano v. The Art of Shaving*, Los Angeles County Superior Court Case No. BC550093, Hon.
15 Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United States
16 District Court, Southern District of California Case No. 17-CV-010624 JM, Hon. Jeffrey T.
17 Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No.
18 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development*
19 *Corporation, et al.*, United States District Court, Southern District of California Case. No. 15-
20 CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles
21 County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The*
22 *Los Angeles Country Club*, Los Angeles County Superior Court Case No. BC566493, Hon.
23 William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara
24 County Superior Court Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v.*
25 *Aramark Services, Inc.*, Santa Clara County Superior Court Case No. 2015-1-CV-288310, Hon.
26 Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court
27 Case No. CIVDS1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, United States District
28 Court, Northern District of California Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney;

(u) *Rivas v. ESA Management*, United States District Court, Central District of California Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, United States District Court, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, United States District Court, Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; among many others.

12. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has actively commenced, prosecuted and concluded over 300 state and federal class and representative actions.

13. Members of my firm attended the mediation on September 4, 20025, with Steven Serratore, an experienced wage and hour neutral. Following the mediation session, Mr. Serratore issued a mediator's proposal, which the parties accepted, reaching the settlement in principle. After additional weeks of arms'-length negotiations, the Parties finalized the terms of the settlement agreement. The Parties then negotiated and drafted the proposed Settlement of Class and Representative Claims and Class Notice presented for preliminary approval, a true and correct copy of which is attached as **Exhibit A**.

///

1 14. The Parties obtained bids from three settlement administrators, and Apex's was
2 the most competitive bid.

3 15. This Settlement is the result of extensive and hard-fought negotiations.

4 16. Plaintiff's counsels' law firms specialize in wage and hour class action litigation,
5 and Defendant was represented by experienced attorneys at Sheppard Mullin.

6 17. Because this is a California-only class, and the mailing of the Notice will occur
7 only in California, 35 days to opt out from or object to the Settlement is sufficient. Because
8 Class Members worked as drivers throughout California locations, communicating with New
9 Bern and others in English, English-only notice is sufficient.

10 18. Plaintiff gave written consent to apportion fees between Class Counsel as
11 follows: 33.3% to Cohelan Khoury & Singer, 33.33% to D.Law, Inc., and 33.33% to Mara Law
12 Firm.

13 19. I have no conflicts of interest with the class or with the class representative. I am
14 not related to the representative Plaintiff. I do not represent opposing factions within the class in
15 that all claims are predicated upon the same theories of liability and benefit all Class Members
16 equally. In sum, I am well-suited to act as Class Counsel and will continue to vigorously
17 represent the interests of the class.

18 20. As Cohelan Khoury & Singer has done since its entry into this matter, we will
19 continue to fulfill our responsibility to the Plaintiff and the members of the class.

20 21. My firm fully endorses the terms and conditions of the proposed Settlement. We
21 respectfully request that the Court grant preliminary approval of the Class and Representative
22 Action Settlement, approve the proposed Class Notice, and set a date to conduct the final
23 approval hearing.

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1 22. The preliminary approval motion and its supporting documents have been
2 provided to the LWDA via the LWDA's website. Attached as **Exhibit B** is a true and correct
3 copy of the LWDA confirmation of Receipt.

4 I declare under the penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct and this declaration is executed on February 12, 2026, in San
6 Diego, California.

7 
8 _____
Isam C. Khoury

EXHIBIT A

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
SAMANTHA D. HARDY, Cal Bar No. 199125
3 CARINA L. NOVELL, Cal Bar No. 329560
GRACE E. SANDER, Cal Bar No. 348394
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cnovell@sheppardmullin.com
7 gsander@sheppardmullin.com

8 Attorneys for Defendants
NEW BERN TRANSPORT CORPORATION,
9 PEPSI-COLA SALES AND DISTRIBUTION, INC.,
and PEPSICO, INC.

10
11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN JOAQUIN
14

15 ANGEL CUELLAR, on behalf of himself and
all others similarly situated,

16 Plaintiff,

17 v.

18 NEW BERN TRANSPORT CORPORATION, a
19 Delaware Corporation; PEPSI-COLA SALES
AND DISTRIBUTION, INC., a Delaware
20 Corporation; PEPSICO, INC., a North Carolina
Corporation; and Does 1-10, Inclusive,

21 Defendants.
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Case No. STK-CV-UOE-2404-008803

**JOINT STIPULATION AND
SETTLEMENT OF CLASS AND
REPRESENTATIVE CLAIMS**

Assigned for All Purposes to:
Hon. Robert T. Waters
Department 11B

[Complaint Filed: July 25, 2024]
[First Amended Complaint Filed: September 16,
2024]
[Second Amended Complaint Filed: December
17, 2024]
Trial Date: None Set

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1 I. **Definitions.** The following terms and definitions will be used in this Stipulation and
2 Settlement of Class and Representative Claims. Additional terms are defined throughout the document
3 as well.

4 A. **“Named Plaintiff”** means Angel Cuellar.

5 B. **“Defendants”** means New Bern Transport Corporation; Pepsi-Cola Sales and
6 Distribution, Inc.; and PepsiCo, Inc.¹

7 C. **“Plaintiffs”** means all hourly-paid, non-exempt drivers employed by New Bern
8 Transport Corporation in California at any time during the Class Period, excluding any weeks covered
9 by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y). **“PAGA-Eligible**
10 **Plaintiffs”** means all hourly-paid, non-exempt drivers employed by New Bern Transport Corporation
11 in California at any time during the PAGA Period, excluding any weeks covered by the settlement in
12 *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y).

13 D. **“Parties”** means Named Plaintiff and Defendants, collectively, as defined
14 above.

15 E. **“Plaintiffs’ Counsel” or “Class Counsel”** means Michael D. Singer, Isam C.
16 Khoury and Maggie K. Realin of Cohelan Khoury & Singer; Emil Davtyan of D.Law, Inc.; and David
17 Mara and Jill Vecchi of Mara Law Firm, PC.

18 F. **“Defendants’ Counsel”** means Samantha D. Hardy and Carina L. Novell of
19 Sheppard, Mullin, Richter & Hampton LLP.

20 G. **“Action” or “Class Action”** means the lawsuit filed in the Superior Court of
21 the State of California for the County of San Joaquin entitled *Angel Cuellar v. New Bern Transport*
22 *Corporation, et al.*, San Joaquin Superior Court, Case No. STK-CV-UOE-2024-0008803.

23 H. **“Operative Complaint”** means the Third Amended Complaint to be filed by
24 Plaintiff in the Action before or together with Plaintiffs’ preliminary approval motion.
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26

27 ¹ Defendants note that Plaintiff was only employed by New Bern Transport Corporation, and
28 the other named Defendants do not now and did not at any time during the relevant time period employ
any employees within Plaintiff’s putative class definition in California.

1 I. **“Court”** means the Superior Court of the State of California for the County of
2 San Joaquin.

3 J. **“Class Members”** means all Plaintiffs who do not elect to exclude themselves
4 by following steps set forth in Section X.G.5.b below.

5 K. **“Class Period”** means the time period beginning on July 25, 2020, and ending
6 on December 3, 2025 (90 days from the Parties’ mediation), excluding any weeks covered by the
7 settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y).

8 L. **“PAGA Period”** means the time period beginning on July 25, 2023, and ending
9 on December 3, 2025 (90 days from the Parties’ mediation), excluding any weeks covered by the
10 settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y). **“PAGA Pay Period”**
11 means any pay period during which a PAGA-Eligible Employee worked for Defendants for at least
12 one (1) day during the PAGA Period.

13 M. **“Unlocated Plaintiff”** means any Plaintiff whose Notice has been returned as
14 undeliverable after all of the procedures in Section X.G.4.c have been followed. Unlocated Plaintiffs
15 will not be sent individual settlement awards, but will remain Class Members.

16 N. **“Effective Date”** means the date by which this settlement is finally approved as
17 provided herein and the Court’s Final Judgment (“Final Judgment or “Judgment”) becomes final. For
18 purposes of this Section, the Court’s Final Judgment becomes final upon the latter of: (1) if no appeal
19 is filed, the expiration date and time for the filing or noticing of any appeal from the Court’s judgment
20 [the earlier of 60 day from the date a Notice of Entry of Judgment or a file-stamped copy of the
21 judgment is served on counsel, or if no such notice is served, 180 days from entry of judgment, unless
22 the time to appeal is extended by the filing and service of a valid notice of intention to move for a new
23 trial, or a valid motion to vacate judgment, or a valid motion for judgment notwithstanding the
24 verdict]; (ii) the date of affirmance of an appeal of the judgment becomes final under the California
25 Rules of Court [30 days after the date a court of appeal’s decision is filed unless (1) the court of appeal
26 grants a petition for rehearing which by rule vacates the decision and sets the case “at large in the
27 Court of Appeal,” or (2) certifies its opinion for publication or partial publication after filing its
28 decision, which resets the finality period from the filing date of the order for publication], the

1 expiration of the time for a petition for review of the Final Judgment or of any court of appeal decision
2 relating to the Final Judgment [10 days after the Court of Appeal's decision is final], and, if review is
3 granted, the date of final affirmance of the Final Judgment following review pursuant to that grant; or
4 (iii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any
5 proceeding on review of any decision relating to the Judgment. To clarify, if any motion challenging
6 the Settlement is filed, the Parties will assume an appeal of any such motion will be filed, and the
7 Effective Date will not occur until (1) the time for appeal of that motion has passed, or (2) the appeal
8 has been resolved, pursuant to the provisions contained herein.

9 II. **Settlement Agreement.** This Stipulation and Settlement of Class Claims (“Settlement,”
10 “Stipulation,” or “Agreement”) is made between Named Plaintiff on behalf of himself and each of the
11 other Plaintiffs, on the one hand, and Defendants, on the other hand, in the Action and subject to
12 approval of the Court. In the event the Settlement does not become effective by the terms of this
13 Stipulation or for any other reason, any orders entered pursuant to this Stipulation shall be vacated and
14 rendered null and void, and the Parties shall revert to their respective positions existing on the date of
15 their second mediation on September 4, 2025.

16 III. **Procedural History.** Named Plaintiff Cuellar filed this lawsuit against Defendants in
17 the Superior Court for the State of California, County of San Joaquin on July 25, 2024. On September
18 16, 2024, Named Plaintiff filed a first amended complaint, and on December 17, 2024, he filed a
19 Second Amended Complaint. Named Plaintiff filed the Operative Complaint (his Third Amended
20 Complaint) on February 11, 2026, alleging causes of action for violation of the portions of the
21 California Code relating to: paying minimum wages for all hours worked, paying sick leave; furnishing
22 accurate itemized wage statements, reimbursements for business expenses, and timely paying all wages
23 upon the conclusion of employment. The Operative Complaint also alleges derivative claims for
24 restitution under the California Business and Professions Code section 17200 et seq. (the “Unfair
25 Competition Law” or “UCL”), and derivative claims for civil penalties under the Labor Code Private
26 Attorneys General Act of 2004 (“PAGA”). The Operative Complaint seeks to pursue Plaintiff’s Labor
27 Code, UCL, and PAGA claims on behalf all persons employed by Defendants as hourly-paid, non-
28

1 exempt drivers at any time within the applicable statute of limitations. The Parties mediated the case
2 before mediator Steven J. Serratore on September 4, 2025.

3 IV. **Investigation in the Class Action.** The Parties have conducted an extensive
4 investigation of the facts and the law, including, *inter alia*, Defendants providing Named Plaintiff with
5 all employment policies and procedures for Plaintiff and the putative class members, and Defendants
6 providing Named Plaintiff with a random sample of time and pay records for approximately 100
7 putative class members. Overall, Defendants produced over 25,000 pages of documents in this matter.
8 Counsel for the Parties further investigated the applicable law as applied to the facts discovered
9 regarding the alleged claims of Plaintiffs and potential defenses thereto and the damages claimed by
10 Plaintiffs.

11 V. **Plaintiffs' Claims.** Named Plaintiff has claimed, and continues to claim, that the
12 Released Claims (as defined in Section X.B below) have merit and give rise to liability on the part of
13 Defendants. Neither this Agreement, the documents referred to or contemplated herein, nor any action
14 taken to carry out this Agreement is, or may be construed or used as, an admission, concession, or
15 indication by or against Named Plaintiff, Plaintiffs, or Class Counsel as to the merits or lack thereof of
16 the claims asserted.

17 VI. **Defendants' Denial of Wrongdoing.** Defendants have denied, and continue to deny,
18 each of the claims and contentions alleged by Named Plaintiff in the Action. Defendants have
19 repeatedly asserted, and continue to assert, defenses thereto and have expressly denied, and continue to
20 deny, any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.
21 Defendants have also denied, and continue to deny, *inter alia*, the allegations that Plaintiffs have
22 suffered damages or harm by the conduct alleged in the Action; that Defendants failed to provide
23 timely and compliant meal or rest breaks; that Defendants failed to pay appropriate minimum and
24 overtime wages for all hours worked; that Defendants failed to pay all earned vacation wages; that
25 Defendants failed to provide accurate itemized wage statements; that Defendants failed to timely pay
26 all final wages to current employees and terminated or resigning employees; that Defendants failed to
27 reimburse for necessary business expenses; that Defendants made unlawful pay deductions; and that
28 Defendants engaged in any other wrongful conduct as alleged in the Action. Neither this Agreement,

1 any document referred to or contemplated in this Agreement, nor any action taken to carry out this
2 Agreement, is, may be construed as, or may be used as an admission, concession, or indication by or
3 against Defendants of any fault, wrongdoing, or liability whatsoever.

4 VII. **Named Plaintiff's Reasons for Settlement.** Named Plaintiff recognizes the expense
5 and length of continued proceedings necessary to continue the litigation against Defendants through
6 trial and through any possible appeals. Named Plaintiff has also taken into account the uncertainty and
7 risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.
8 Named Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims
9 asserted in the Action (the "Claims" or "Class Action Claims"), Defendants' defenses thereto, and the
10 difficulties in establishing damages for Plaintiffs. Named Plaintiff has also taken into account the
11 extensive informal discovery and settlement negotiations conducted, which resulted in the material
12 settlement terms contained in this Agreement. Based on the foregoing, Named Plaintiff has determined
13 that the settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in
14 the best interests of Plaintiffs.

15 VIII. **Defendants' Reasons for Settlement.** Defendants have concluded that any further
16 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
17 Defendants' time, energy, and resources have been and, unless this Settlement is made, will continue
18 to be, devoted to the defense of the Claims. For these reasons, Defendants have agreed to settle in the
19 manner and upon the terms set forth in this Agreement to fully resolve the Claims and the Action.

20 IX. **This Settlement is Fair, Adequate and Reasonable.** The Parties believe this
21 Settlement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this
22 Settlement in arms-length negotiations taking into account all relevant factors, present and potential.
23 This Settlement was reached after extensive negotiations with mediator Steven J. Serratore. Defendants
24 produced, and Plaintiffs reviewed over 25,000 pages of documents as part of their investigation into
25 Plaintiffs' claims.

26 X. **Stipulation.** NOW, THEREFORE, IT IS HEREBY STIPULATED by and among
27 Named Plaintiff, on one hand, and Defendants, on the other hand, and conditioned upon approval by
28

1 the Court, that the Action is hereby compromised and settled pursuant to the terms and conditions set
2 forth in this Agreement.

3 A. **Class Certification.** For purposes of this Stipulation only, the Parties agree to
4 the certification of the Settlement Class, to include all hourly-paid, non-exempt drivers in the State of
5 California employed by Defendant New Bern Transport Corporation during the Class Period. Should
6 for whatever reason the Stipulation not become final, the fact that the Parties were willing to stipulate
7 to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in
8 connection with, the issue of whether a class should be certified in a non-settlement context in the
9 Action, and shall have no bearing on, and shall not be admissible in connection with, the issue of
10 whether a class should be certified in any other lawsuit.

11 B. **Release as to All Class Members.** The release set forth in this Section pertains
12 to Class Members. As set forth in Section I.I, above, Class Members are “all Plaintiffs who do not elect
13 to exclude themselves by following the steps set forth in Section X.G.5.b below.” Upon full funding of
14 the Settlement, the Class Members, including Named Plaintiff, releases Defendants and each of their
15 past or present officers, directors, shareholders, employees, agents, principals, heirs,
16 representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their
17 respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys and
18 each of their company-sponsored employee benefit plans and all of their respective officers, directors,
19 employees, administrators, fiduciaries, trustees, and agents (the “Released Parties”) from the “Released
20 Claims.” For the purposes of this Agreement, “Released Claims” means any and all claims, demands,
21 rights, liabilities, and causes of action during the Class Period, of every nature and description
22 whatsoever, known or unknown, asserted or that might have been asserted, whether in contract, or for
23 violation of any California or federal statute, rule, or regulation, based on California or federal wage-
24 and-hour laws, whether for economic damages, restitution, penalties, or liquidated damages, arising
25 out of, relating to, or in connection with the Claims pleaded or that reasonably could have been
26 pleaded based upon the facts set forth in the Operative Complaint or any other pleading filed in the
27 Action, including but not limited to any and all claims for unpaid minimum wages; unpaid wages,
28 including straight time wages and overtime wages (including on an off-the-clock, rounding, regular

1 rate calculation, or other theory); sick pay (including the calculation of the rate at which sick pay is
2 paid); vacation pay; unpaid reporting time or split-shift pay; timing of payment (both during and upon
3 termination of employment); meal and rest period claims (including the calculation of the rate at which
4 meal period and rest break penalties are paid); unpaid expense reimbursements; record-keeping
5 violations, and any and all associated penalties and damages (including but not limited to pay stub
6 penalties, waiting time penalties, any other penalties arising under the California Labor Code, and
7 liquidated damages); and claims for alleged unlawful, unfair, and/or fraudulent business practices
8 under California Business and Professions Code section 17200 et seq. based on the alleged Labor Code
9 violations; and interest, attorneys' fees and/or costs, at any time during the Class Period, excluding any
10 weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y).

11 C. **Release as to PAGA-Eligible Employees and the State of California**

12 Upon full funding of the Settlement, Plaintiff, PAGA-Eligible Plaintiffs and the state of California, are
13 deemed to release, on behalf of themselves and their former and present representatives, agents,
14 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
15 penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the
16 Operative Complaint and PAGA Notice that occurred during the PAGA Period, or any other pleading
17 filed in the Action, including but not limited to any and all claims for unpaid minimum wages; unpaid
18 wages, including straight time wages and overtime wages (including on an off-the-clock, rounding,
19 regular rate calculation, or other theory); sick pay (including the calculation of the rate at which sick
20 pay is paid); vacation pay; unpaid reporting time or split-shift pay; timing of payment (both during and
21 upon termination of employment); meal and rest period claims (including the calculation of the rate at
22 which meal period and rest break penalties are paid); unpaid expense reimbursements; record-keeping
23 violations, and any and all associated penalties and damages (including but not limited to pay stub
24 penalties, waiting time penalties, any other penalties arising under the California Labor Code, and
25 liquidated damages); and claims for alleged unlawful, unfair, and/or fraudulent business practices
26 under California Business and Professions Code section 17200 et seq. based on the alleged Labor Code
27 violations; alleged violation of the Labor Code Private Attorneys General Act of 2004 (“PAGA”)
28 based on the alleged Labor Code violations; and interest, attorneys' fees and/or costs, at any time

1 during the PAGA Period, excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et*
2 *al.*, Case No. 22-cv-00802 (S.D.N.Y) (“PAGA Released Claims”).

3 The Parties intend that this Settlement shall release Class Members’ FLSA claims to the fullest
4 extent permitted by law upon the Court’s approval of the Settlement. Accordingly, Class Members
5 who timely cash or otherwise negotiate their Settlement checks will be deemed to have opted into the
6 Actions for purposes of the FLSA, and their Released Claims shall include any and all claims they may
7 have for unpaid overtime or minimum wages under the FLSA arising during the Class Period. The
8 following language will be printed on the reverse side of each Settlement check, or words to this effect:
9 “By endorsing or otherwise negotiating this check, I acknowledge that I have read, understand, and
10 agree to the terms set forth in the [Class Notice], and I consent to join in the Fair Labor Standards Act
11 (“FLSA”) portion of the Actions, elect to participate in the settlement of the FLSA claims, and agree to
12 release all of my FLSA claims that are covered by the Settlement.” Plaintiffs’ Operative Complaint
13 will assert a cause of action under FLSA.

14 The Class Members may hereafter discover facts in addition to or different from those they
15 now know or believe to be true specifically with respect to the subject matter of the Released Claims,
16 but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall
17 have, fully, finally, and forever settled and released any and all of the Released Claims, whether known
18 or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore
19 have existed, upon any theory of law or equity now existing or coming into existence in the future,
20 including, but not limited to, conduct that is intentional, with or without malice, or a breach of any
21 duty, law or rule, without regard to the subsequent discovery or existence of such different or
22 additional facts.

23 The Class Members and PAGA-Eligible Employees may not sue or otherwise make a
24 claim against any of the Released Parties for the Released Claims or PAGA Released Claims.

25 D. **General Release by Named Plaintiff Only.** Named Plaintiff, as of the Effective
26 Date, make the additional following general release of all claims, known or unknown. Named Plaintiff
27 fully releases and discharges the Released Parties from all claims, demands, rights, liabilities, and
28 causes of action of every nature and description whatsoever, known or unknown, asserted or that might

1 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or
2 regulation arising out of, relating to, or in connection with any act or omission by or on the part of any
3 of the Released Parties committed or omitted prior to the execution hereof relating to his employment
4 with or resignation from any of the Released Parties. This includes any unknown claims Named
5 Plaintiff does not know or suspect to exist in his favor, which, if known by him, may have affected his
6 settlement with, and release of, the Released Parties or might have affected his decision not to object to
7 the settlement.

8 With respect to this general release, Named Plaintiff stipulates and agrees that, upon the
9 Effective Date, Named Plaintiff shall be deemed to have, and by operation of the Final Judgment shall
10 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights
11 and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal
12 or state law, which provides:

13 **A general release does not extend to claims that the creditor or**
14 **releasing party does not know or suspect to exist in his or her favor at**
15 **the time of executing the release and that, if known by him or her,**
would have materially affected his or her settlement with the debtor
or released party.

16 Named Plaintiff may hereafter discover facts in addition to or different from those
17 Named Plaintiff now knows or believes to be true with respect to the subject matter of the General
18 Release, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment
19 shall have, fully, finally, and forever settled and released any and all of the claims released pursuant to
20 the General Release, whether known or unknown, suspected or unsuspected, contingent or non-
21 contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing
22 or coming into existence in the future, including, but not limited to, conduct that is negligent,
23 intentional, with or without malice, or a breach of any duty, law or rule, without regard to the
24 subsequent discovery or existence of such different or additional facts. Named Plaintiff will no longer
25 be an aggrieved employees for purposes of PAGA once the Settlement is approved and Defendants
26 complete their duties under the Settlement Agreement. Named Plaintiff will refrain from filing any
27 litigation against Defendants while the Settlement is pending.

1 E. **Neutral Reference**. Defendants will only provide dates of employment and job
2 title in response to any inquiries it may receive from prospective employers on behalf of Named
3 Plaintiff. Prospective employers must call the Work Verification number. The number is 1-800-EMP-
4 AUTH, and New Bern Transport Corporation's Corporate Code is 73774. Named Plaintiff may also
5 log on to www.theworknumber.com. The only information that will be provided will be Named
6 Plaintiff's job title and dates of employment. Named Plaintiff will be given additional directions if
7 Named Plaintiff wishes to release information about income.

8 F. **Settlement Fund**. Defendants will create a settlement fund in the amount of
9 Nine-Hundred Ninety-Nine Thousand and Nine Hundred Ninety-Nine Dollars and No Cents
10 (\$999,999.00) (the "Settlement Fund"). If the number of workweeks is more than 10% greater than
11 241,768 workweeks (or 265,945 total workweeks), the settlement payment shall increase
12 proportionally, meaning that if the number of workweeks is 11% greater the amount should increase by
13 1% if 12% greater than by 2% and so on. The Settlement Fund will be allocated among these
14 elements:

15 (a) payments to Class Members of the Individual Settlement Awards less deductions as
16 explained in Section X.F.2;

17 (b) a total amount not to exceed Ten Thousand Dollars and No Cents (\$10,000.00) to be paid to
18 the Named Plaintiff as a Service Award, subject to Court approval;

19 (c) reasonable claims administration expenses to be paid to the Settlement Administrator (as
20 defined herein), currently estimated at \$16,990, to cover the reasonable costs of the settlement
21 administration process ("Claims Administration Costs");

22 (d) Plaintiffs' attorneys' fees not to exceed Thirty-Three Percent (33%) of the Settlement Fund,
23 or a maximum of Three-Hundred Twenty-Nine Thousand and Nine Hundred Ninety-Nine
24 Dollars and Sixty-Seven Cents (\$329,999.67) subject to Court approval ("Attorneys' Fees");

25 (e) Plaintiffs' attorneys' litigation costs not to exceed the amount of Twenty-Five Thousand
26 Dollars and No Cents (\$25,000) subject to their billing statements and Court approval
27 ("Litigation Costs"); and
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(f) Fifty Thousand Dollars and No Cents (\$50,000.00) allocated for penalties recoverable under PAGA and payable to the Labor and Workforce Development Agency ("LWDA"), 65% of which, or \$32,500.00, will be paid to the LWDA, and 35% of which, or \$17,500.00, will be paid to the Class Members as an additional component of their Settlement Awards (as defined herein) and will be part of the Settlement Fund.

Any amounts allocated to Named Plaintiff's Service Award, Claims Administration Costs, Attorneys' Fees, Litigation Costs, and PAGA penalties not awarded by the Court shall remain the property of Defendants.

The amount that remains after the Service Award, Claims Administration Costs, Attorneys' Fees, Litigation Costs, and the LWDA portion of PAGA penalties have been deducted from the Settlement Fund shall be called the "Payout Fund." The Payout Fund shall be designated as 20% wages and 80% interest and penalties.

1. Fees and Costs Award and Service Awards. The Parties agree to the designation of Michael D. Singer, Isam C. Khoury and Maggie K. Realin of Cohelan Khoury & Singer; Emil Davtyan of D.Law, Inc.; and David Mara and Jill Vecchi of Mara Law Firm, PC as "Class Counsel." Class Counsel will request that the Court approve an award of attorneys' fees of up to Three-Hundred Twenty-Nine Thousand and Nine Hundred Ninety-Nine Dollars and Sixty-Seven Cents (\$329,999.67) ("Fees Award"). This constitutes 33% Percent of the value of the Settlement Fund. Class Counsel will also request a Costs Award not to exceed Twenty-Five Thousand Dollars and No Cents (\$25,000.00). Defendants will not oppose these requests. Class Counsel shall not be permitted to petition the Court for, or accept, any additional payments for fees, costs, or interest, and the Fees Award and Costs Award shall be for all claims for attorneys' fees and costs past, present, and future incurred in the Action.

Defendants' payment of the Fees Award and Costs Award to Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses or costs in the Action incurred by any attorney on behalf of Named Plaintiff and/or the Class. Further, said payment shall relieve Defendants, the Settlement Administrator, the Settlement Fund, and Defendants' Counsel of any other claims or liability to any other attorney or law

1 firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on
2 behalf of Named Plaintiff and/or Class Members.

3 Class Counsel will request that the Court approve a Service Award in a total amount not
4 to exceed Ten Thousand Dollars and No Cents (\$10,000.00) to be paid to the Named Plaintiff as a
5 Service Award and to be paid out of and deducted from the Settlement Fund. Defendants will not
6 oppose such request. Named Plaintiff's Service Award will not be taxed as wages. Named Plaintiff
7 will receive a 1099 form relating to the Service Awards. This award shall be in addition to the amount
8 the Named Plaintiff may receive as a Class Member. The Fees Award, Costs Award, and Service
9 Award shall be paid by Defendants by and through the Settlement Administrator from the Settlement
10 Fund to Class Counsel within thirty (30) calendar days after the Effective Date. Any reduction of the
11 Fees Award and Costs Award to Class Counsel and Service Award shall be added to the Net
12 Settlement Amount for distribution to Class Members.

13 2. Plan of Allocation for Payment to Class Members. Within thirty (30)
14 calendar days after the Effective Date, and solely for purposes of this Settlement, Defendants shall pay
15 by and through the Settlement Administrator from the Payout Fund the Settlement Awards (as
16 hereinafter defined) to the Class Members in accordance with the following eligibility and settlement
17 formula requirements.

18 a. Excluded from becoming a Class Member are those Plaintiffs
19 who submit valid and timely requests for exclusion pursuant to the terms and procedures of the Notice
20 of Class Action Settlement (attached as Exhibit 1 hereto).

21 b. Any Plaintiff who does not timely request exclusion shall become
22 a Class Member and will receive a Settlement Award. The Individual Settlement Awards to be
23 allocated to each Class Member shall be calculated as follows:

24 (1) After deducting the amount of the Fees Award, the Costs
25 Award, the Service Award, the LWDA's share of the PAGA penalties, and settlement administration
26 expenses that are all finally approved by the Court, the remaining Payout Fund will be allocated to the
27 Class Members;

1 (2) To arrive at these amounts, the Payout Fund will be
2 distributed on a pro-rata basis to Class Members based on a per-workweek basis. Class Members will
3 receive their pro-rata share based on how many workweeks they worked during the Class Period as
4 compared to all workweeks worked by all Class Members during the Class Period, excluding any
5 weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y.)
6 (“Workweek Totals”). The number of workweeks for each Plaintiff will be determined by adding all
7 the calendar days within the inclusive dates of employment and dividing that number by seven. Any
8 partial workweek will be expressed as a percentage of a full workweek. This shall be considered each
9 Plaintiff’s “Workweek Figure.” Class Members’ Gross Settlement Amounts will be calculated by
10 dividing the Payout Fund by the total of all Plaintiffs’ Workweek Figures to arrive at a Per-Workweek
11 Amount, and then multiplying this amount by each Class Member’s Workweek Figure. Defendants
12 represent that the number of workweeks covered by the Settlement is 241,768. For example, a Class
13 Member who worked 365 days would have a Workweek figure of 52 weeks. If the Payout Fund was
14 \$585,509.33, and the total workweeks for all Plaintiffs was 241,768, this would result in a \$2.42 Per-
15 Workweek Amount. Then, the above Class Member would be eligible for \$2.42 for 52 workweeks, or
16 \$125.84. This would be the Class Member’s Gross Settlement Amount. Individual PAGA Payments to
17 PAGA-Eligible Plaintiffs shall be calculated by (a) dividing the amount of the PAGA-Eligible
18 Plaintiffs’ thirty-five percent (35%) share of PAGA penalties (\$17,500) by the total number of PAGA
19 Pay Periods worked by all PAGA-Eligible Plaintiffs during the PAGA Period; and (b) multiplying the
20 result by each PAGA-Eligible Plaintiff’s PAGA Pay Periods during the PAGA Period. The Settlement
21 Administrator will report the Individual PAGA Payments on IRS Form 1099. PAGA-Eligible Plaintiffs
22 assume full responsibility for any taxes owed on their Individual PAGA Payments.

23 (3) Twenty percent (20%) of all Individual Settlement
24 Payments to Class Members will be called the “Gross Wage Portion.” The remaining eighty percent
25 (80%) of payments to Class Members represents the “Non-Wage Portion” of the Individual Settlement
26 Payment and includes interest and penalties sought in the Action. Class Members will be issued W2s
27 for the Wage Portions of their Individual Settlement Payment and IRS Form 1099s for the Non-Wage
28 Portions.

1 c. The Settlement Administrator shall be responsible for issuing the
2 payments and calculating and withholding all required state and federal taxes owed by the Class
3 Members and Defendants. The Settlement Administrator shall calculate the Settlement Awards no later
4 than fourteen (14) calendar days after receiving the Workweek Totals for each Plaintiff from
5 Defendants.

6 d. Some of the Individual Settlement Awards may remain
7 unclaimed because a Plaintiff (1) was an Unlocated Plaintiff, (2) submitted a valid and timely request
8 for exclusion, and/or (3) failed to cash his or her Individual Settlement Award Check within one
9 hundred and forty (140) days of its issuance, as allowed by Court order. Funds associated with the
10 Individual Settlement Awards of Unlocated Plaintiffs and Plaintiffs who have submitted valid and
11 timely requests for exclusion shall be included in the Payout Fund and will be distributed amongst
12 Class Members in accordance with the formulas above. Funds associated with uncashed checks will be
13 transferred by Defendants to the California State Controller with the identity of the Class Member to
14 whom the funds belong, to be held for the Class Member per the California Unclaimed Property Law,
15 in the interest of justice. The money paid to the California State Controller will remain the Class
16 Member's property. This allows Class Members who did not cash their checks to collect their
17 Individual Settlement Payment at any time in the future. Therefore, there will be no unpaid residue or
18 unclaimed or abandoned Class Member fund and the California Code of Civil Procedure Section 384
19 shall not apply.

20 3. Operation of the Settlement Fund and Payout Fund.

21 a. At no time shall Defendants have the obligation to segregate the
22 funds comprising the Settlement Fund from Defendants' other assets, and Defendants shall retain
23 exclusive authority over and responsibility for those funds until they are paid over to the Settlement
24 Administrator.

25 b. The Settlement Administrator will calculate the net amounts to be
26 paid to the Class Members from the Payout Fund in accordance with the terms and provisions of this
27 Agreement.
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1 c. The Settlement Administrator shall have the authority and
2 obligation to make payments, credits, and disbursements, including payments and credits in the manner
3 set forth herein, to Class Members from the Payout Fund in accordance with the methodology set out
4 in this Agreement and orders of the Court.

5 d. To the extent any tax returns must be filed for the Settlement
6 Fund pursuant to this Agreement, the Settlement Administrator shall cause to be timely and properly
7 filed all informational and other tax returns, if any, necessary with respect to the Settlement Fund.
8 Such returns shall be consistent with this Section. The Parties do not believe that the Settlement Fund
9 will generate any taxable income. However, if any taxable income is generated by the Settlement Fund,
10 the tax returns filed shall reflect that all taxes payable on the taxable income of the Settlement Fund, if
11 any, shall be paid from the Settlement Fund. Any expenses consisting of the expenses and costs
12 incurred in connection with the operation and implementation of this Section (including, without
13 limitation, reasonable expenses of tax attorneys, accountants, or other designees retained by the
14 Settlement Administrator as required for the preparation and filing of tax returns described in this
15 Section) shall be treated as, and considered to be, a cost of administration of the Settlement.

16 e. No person shall have any claim against Defendants, Defendants'
17 Counsel, Named Plaintiff, Plaintiffs, or Plaintiffs' Counsel based on distributions and payments made
18 in accordance with this Agreement.

19 B. **Administration of the Settlement.**

20 1. A hearing shall be held before the Court on a mutually-convenient date,
21 or on another date and time if that hearing is rescheduled, at which the Named Plaintiff shall request
22 preliminary approval of the Settlement (the "Preliminary Approval Hearing"). In conjunction with this
23 hearing, Named Plaintiff will submit this Agreement, which sets forth the terms of this settlement, and
24 will include proposed forms of all notices and other documents as attached hereto necessary to
25 implement the Settlement. Defendants shall not oppose Named Plaintiff's request for preliminary
26 approval consistent with this Agreement.

27 2. Simultaneous with the filing of this Agreement, and solely for purposes
28 of this Settlement, Named Plaintiff will request the Court to enter the Preliminary Approval Order

1 (“Preliminary Approval Order”) (substantially in the form attached as Exhibit 2 hereto) preliminarily
2 approving the proposed Settlement, approving the appointment of Class Counsel, and setting a date for
3 final approval of the Settlement. The Proposed Order shall provide for notice of the Settlement and
4 related matters to be sent to Plaintiffs as specified herein. The Parties will request the Court, in its
5 preliminary approval of this Settlement, to enjoin any Plaintiffs from initiating or prosecuting any
6 proceeding on any claim to be released pursuant to this Stipulation unless, and until, either the
7 Plaintiffs opt out of the class, or the Effective Date does not occur (as set forth in Section I.L, above).

8 3. Interim Stay of Proceedings. The Parties agree to hold all Court
9 proceedings in the Act in abeyance pending the Preliminary Approval Hearing and Final Approval
10 Hearing to be conducted by the Court. No additional discovery shall be conducted in this case unless
11 this Settlement Agreement is nullified in accordance with Section X.H below.

12 4. Notice of the Settlement shall be provided to Plaintiffs using the
13 following procedures:

14 a. Class List. Within twenty-one (21) calendar days after entry of
15 the Preliminary Approval Order or the closure of the Class Period, whichever is later, Defendants shall
16 provide the Settlement Administrator a “Class List and Data Report” showing the full names, full
17 social security numbers, and last known telephone numbers and mailing addresses for all Plaintiffs and
18 their weeks worked within a covered position, as well as applicable Workweek Totals. The Settlement
19 Administrator shall keep this information confidential and shall not share this information with Class
20 Counsel.

21 b. Settlement Administrator. The Parties agree to designate Apex
22 Class Action Administration as the “Settlement Administrator.” In the event Apex Class Action
23 Administration is subsequently unable to serve as Settlement Administrator, another Settlement
24 Administrator shall be agreed to by the Parties, or, if they cannot reach agreement, will be selected by
25 the Court. The Parties agree that they have selected a Settlement Administrator with whom they have
26 no financial interest or other relationship that could create a conflict of interest. The Settlement
27 Administrator shall be responsible for: preparing, printing, translating, and mailing the Notice as
28 directed by the Court to the Plaintiffs; communicating with Plaintiffs and others regarding the

1 Settlement Award administration process, corrections, and/or additional information needed for
2 administration; calculating the Total Workweeks; calculating the amount of the Individual Settlement
3 Awards and all payroll tax deductions to be withheld; keeping track of opt outs; drafting and mailing
4 Settlement Award checks to Class Members; disbursing the Fees Award and Costs Award to Class
5 Counsel; disbursing the Service Awards to Named Plaintiff through Class Counsel; and submitting the
6 LWDA's portion of the PAGA payment to the LWDA; preparing, mailing, and filing all applicable tax
7 forms necessary as a result of the payments made under this Settlement; and for such other tasks as the
8 Parties mutually agree or the Court orders the Settlement Administrator to perform.

9 c. Notice Mailing. By no later than thirty (30) calendar days after
10 Preliminary Approval, or receipt of the Class List/Data Report, whichever is later, the Settlement
11 Administrator shall send the Notice to all Plaintiffs via First Class regular U.S. mail. Prior to mailing,
12 one National Change of Address ("NCOA") search will be performed on Defendants' records to
13 ascertain updated contact information for all Plaintiffs. Any Notices returned to the Settlement
14 Administrator as non-delivered before the Notice Deadline Date specified below shall be sent to the
15 forwarding address affixed thereto within three (3) business days of receiving notice that a Notice was
16 undeliverable. If no forwarding address is provided, then the Settlement Administrator shall attempt to
17 determine a correct address by using a single computer or other search using the social security number
18 of the individual involved and shall forward the Notice to the correct address. The Objection/Exclusion
19 Deadline Date shall be extended by seven (7) calendar days if the Notice was re-mailed as provided in
20 this section.

21 d. In the event the procedures in this Section are followed and the
22 intended recipient of a Notice still does not receive the Notice, the intended recipient shall remain a
23 Class Member and shall be bound by all terms of the Settlement and by any Final Judgment entered by
24 the Court, provided the Settlement is approved by the Court. As defined above, these persons shall be
25 included as "Unlocated Plaintiffs." The Parties agree that this procedure is the best notice practicable
26 under the circumstances. The settlement amount attributed to Unlocated Plaintiffs and Plaintiffs who
27 timely opt-out of the settlement shall be distributed as reflected herein.

1 5. Procedure for Objecting to or Requesting Exclusion from Class Action
2 Settlement.

3 a. Procedure for Objecting. The Notice shall provide that Class
4 Members who wish to object to the Settlement must submit to the Settlement Administrator a written
5 statement objecting to the Settlement. Such written objection must contain the name, address,
6 telephone number, and last four digits of the social security number of the person objecting; the
7 location and dates of their employment by Defendants; whether the objector has retained an attorney;
8 and, if the objector has retained an attorney, the name of the firm, name of the attorney, address, and
9 telephone number. Such written statement must be submitted to the Settlement Administrator no later
10 than thirty-five (35) calendar days after the date the Notice is first mailed (the “Objection/Exclusion
11 Deadline Date”). No Class Member shall be entitled to be heard at the Final Approval Hearing
12 (whether individually or through separate counsel at their own expense) or to object to the Settlement,
13 and no written objections or briefs submitted by any Class Member shall be received or considered by
14 the Court at the Settlement Hearing, unless written notice of the Class Member’s intention to appear at
15 the Settlement Hearing, and copies of any written objections or briefs, have been submitted to the
16 Settlement Administrator, on or before the Objection/Exclusion Deadline Date. The written objection
17 must be postmarked by the Objection/Exclusion Deadline Date. The date of the postmark on the return
18 mailing envelope shall be the exclusive means used to determine whether an objection has been timely
19 submitted. Any Class Member can appear at the Settlement Hearing and voice his/her objection to the
20 Settlement, whether or not he/she had previously submitted a written objection as provided in this
21 section. Any Class Member who submits a timely and valid objection will still be entitled to their
22 Individual Settlement Award, become a Class Member, and will be bound by the Settlement if the
23 Court approves the Settlement. If a Plaintiff submits both a timely objection and request for exclusion
24 from the settlement, the objection will not be considered but the request for exclusion will be accepted.

25 b. Procedure for Requesting Exclusion. The Notice shall provide
26 that Plaintiffs who wish to exclude themselves from the Class must submit a written statement
27 requesting exclusion from the Class on or before the Objection/Exclusion Deadline Date. Such written
28 request for exclusion must contain the name, address, telephone number, and last four digits of the

1 social security number of the person requesting exclusion, and the location and dates of their
2 employment by Defendants. Such request must be returned by mail to the Settlement Administrator
3 and must be postmarked on or before the Objection/Exclusion Deadline Date. The date of the postmark
4 on the return mailing envelope shall be the exclusive means used to determine whether a request for
5 exclusion has been timely submitted. Any Plaintiff who submits a timely and valid request for
6 exclusion from the Class will not be entitled to any recovery under the Settlement and will not be
7 bound by the Settlement or have any right to object, appeal, or comment thereon. Plaintiffs who fail to
8 submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline Date
9 shall become Class Members and shall be bound by all terms of the Settlement and any Final Judgment
10 entered in the Class Action if the Settlement is approved by the Court. Because this Settlement
11 resolves claims brought under PAGA by Plaintiff acting as a proxy and as a Private Attorney General
12 of and for the State of California and LWDA, PAGA-Eligible Plaintiffs (including the named Plaintiff)
13 have no right to object to the PAGA portion of the Settlement or exclude himself or herself from the
14 release of claims applicable to PAGA as set forth in section 10(C) of this Agreement, regardless of
15 whether the PAGA-Eligible Plaintiff cashes any payment received as a result of this Settlement.

16 6. No Solicitation of Settlement Objections or Exclusions. The Parties
17 agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the
18 Parties or their counsel seek to solicit or otherwise encourage Plaintiffs to submit written objections to
19 the Settlement or requests for exclusion from the Settlement Class or to appeal from the Court's Final
20 Judgment.

21 7. The Settlement Administrator will, on a weekly basis during and for a
22 reasonable period following the Notice Period, provide updates to Class Counsel and Defense Counsel
23 as to the number of Plaintiffs who submitted (i) valid opt-out requests for exclusions; and (ii)
24 objections. To the extent practicable, the weekly updates shall also provide updated data on the extent
25 of Class Notices that are returned undeliverable and any re-mailing efforts.

26 8. No less than sixteen (16) court days before the Final Approval Hearing,
27 the Settlement Administrator will prepare a declaration to be provided to Class Counsel and
28 Defendants counsel for filing in support of Plaintiffs' motion for final approval attesting to the

1 following: (i) its mailing efforts regarding the Class Notice; (ii) its receipt of the valid requests for
2 exclusion and its inability to deliver the Class Notice to Plaintiffs, if any; and (iii) the highest and
3 lowest estimated Individual Settlement Awards, along with the estimated average Individual
4 Settlement Awards.

5 9. Option to Terminate Settlement. If, after the Objection/Exclusion
6 Deadline Date, and before the Settlement Hearing referenced in Section X.G.10 below, the number of
7 Plaintiffs who have timely submitted requests for exclusion total more than ten percent (10%) of all
8 Plaintiffs, Defendants shall have, in their sole discretion, the option to terminate this Settlement. To be
9 valid, a request for exclusion must be submitted on a timely basis as required by this Agreement.
10 Defendants agree to meet and confer in good faith with Class Counsel before withdrawing from this
11 Agreement. If Defendants elect to withdraw, Defendants shall provide written notice of such
12 withdrawal to Class Counsel. If Defendants choose to exercise the right to withdraw from this
13 Agreement, Defendants must do so within twenty (20) days after the Settlement Administrator notifies
14 Class Counsel and Defendants' Counsel of the number of valid opt outs or objections received, which
15 the Settlement Administrator will do within twenty (20) days after the Objection/Exclusion Deadline
16 Date. Class Counsel may attempt to cause retraction of any election of exclusion by Plaintiffs. If
17 Defendants have exercised its option to withdraw from the Settlement Agreement, and Class Counsel
18 succeeds in causing the retraction of sufficient requests for exclusion such that the remaining number
19 of Plaintiffs seeking exclusion does not exceed 10% of the Plaintiff Class, then Defendants' notice of
20 withdrawal from the Settlement Agreement shall automatically be deemed a nullity. To retract a prior
21 request for exclusion, a Plaintiff must provide to the Settlement Administrator, at least three (3)
22 calendar days prior to the Final Settlement Hearing, or any adjournment thereof, a written notice
23 stating their desire to retract their request for exclusion from the Plaintiff Class. Any withdrawal from
24 this Agreement by Defendants shall have the same effect as a termination of the Settlement Agreement
25 for failure to satisfy a condition of settlement, and the Agreement shall become null and void and have
26 no further force or effect, and the Settlement Class certified pursuant to the Agreement will be
27 decertified for all purposes. If Defendants choose to terminate the Stipulation based upon this Section,
28

1 the Parties shall split the Settlement Administrator's fees and costs incurred to that point on a 50-50
2 basis.

3 10. Final Settlement Approval Hearing and Entry of Final Judgment. Upon
4 expiration of the Objection/Exclusion Deadline Date, with the Court's permission, a Final Settlement
5 Approval Hearing ("Settlement Hearing") shall be conducted to determine final approval of the
6 Settlement along with the amount properly payable for (i) attorneys' fees and costs to Class Counsel,
7 (ii) Named Plaintiff's Service Awards, (iii) Settlement Administration fees; and (iv) PAGA penalties.
8 Upon final approval of the Settlement by the Court at or after the Settlement Hearing, the Parties shall
9 present an Order Granting Final Approval and Final Judgment ("Final Judgment") (attached as Exhibit
10 3 hereto) to the Court for its approval. After entry of the Final Judgment, the Court shall have
11 continuing jurisdiction pursuant to California Code of Civil Procedure section 664.6 solely for
12 purposes of addressing: (i) settlement administration matters and (ii) such post-Final Judgment matters
13 as may be appropriate under court rules or as set forth in this Agreement.

14 11. The Settlement Administrator shall establish a Settlement Account
15 (either a separate checking account or separate ledger entry) and timely fund any checks written upon
16 the Settlement Account to pay all amounts owed under this Settlement;

17 a. Within fourteen (14) calendar days after the Effective Date,
18 Defendants will wire to or otherwise fund the Settlement created by the Settlement Administrator to
19 pay the Settlement Awards, Fees Award, Costs Award, Service Award, and PAGA payment, as
20 specified above;

21 b. Within fourteen (14) calendar dates after the Effective Date,
22 Defendants will pay the Settlement Administrator for costs and expenses of administering this
23 Settlement in the amount awarded by the Court out of the Settlement Fund.

24 12. Procedure for Payment of Settlement Awards. Within thirty (30)
25 calendar days after the Effective Date, the Settlement Administrator will pay Attorneys' Fees and
26 Costs, the Named Plaintiff's Service Award, and \$32,500.00 to the LWDA. Within thirty (30) calendar
27 days after the Effective Date, the Settlement Administrator shall mail Individual Settlement Awards to
28 the Class Members. Any checks paid to Settlement Class Members shall remain valid and negotiable

1 for one hundred forty(140) days from the date of their issuance (“Check Stale Date”). Any checks not
2 cashed after one hundred forty (140) calendar days will be distributed as set forth within this
3 Agreement. For any checks that are returned with a forwarding address, the Settlement Administrator
4 shall send the check to that forwarding address within ten (10) calendar days. For any checks that are
5 returned with no forwarding address, the Settlement Administrator shall attempt to determine a correct
6 address by using a single computer or other search and shall call the Class Member at the telephone
7 number provided by Defendants. If the Settlement Administrator obtains a new address, then the check
8 shall be mailed to that new address within ten (10) calendar days. In the event these procedures are
9 utilized and the person does not receive the check, no additional steps are required and the Settlement
10 Administrator will have fulfilled all of its obligations under this section.

11 13. Administration of the Settlement shall be completed on or before the
12 date approximately one hundred eighty (180) days or sooner after the Check Stale Date. Upon
13 completion of administration of the Settlement, the Settlement Administrator shall provide Class
14 Counsel and counsel for Defendants with a declaration of completion to be filed with the Court by
15 Class Counsel.

16 14. Administration Cost. All of Defendants’ own legal fees, costs and
17 expenses incurred in the Action shall be borne by Defendants. In accordance with Section X.F,
18 settlement administration expenses will be part of the Settlement Fund. The Parties agree to cooperate
19 in the Settlement administration process and to make all reasonable efforts to control and minimize the
20 costs and expenses incurred in administration of the Settlement.

21 C. **Nullification of Settlement Agreement.** In the event that prior to the Effective
22 Date: (i) the Court does not enter a Preliminary Approval Order; (ii) the Court does not finally approve
23 the Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided herein
24 which becomes final as a result of the occurrence of the Effective Date; (iv) more than ten percent
25 (10%) of Plaintiffs submit valid opt-out election forms and Defendants exercise their option to void the
26 settlement; or (v) the Settlement does not become final for any other reason, this Settlement Agreement
27 shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement
28 shall be treated as void *ab initio*. In that case, the Parties will seek to reach a revised agreement

1 acceptable to them to be presented to the Court. In the event the Parties cannot reach a mutually
2 acceptable revised agreement, they shall ask the mediator to assist them in resolving the remaining
3 disputes before litigating further. In the event the Parties are unable to reach a revised agreement, or
4 any such revised agreement is not approved by the Court, the Parties shall proceed in all respects as if
5 this Settlement Agreement had not been executed and Defendants will not make any payments under
6 this Settlement Agreement, except that any fees already incurred by the Settlement Administrator shall
7 be paid for equally by the Parties. In the event an appeal is filed from the Court's Final Judgment, or
8 any other appellate review is sought prior to the Effective Date, administration of the Settlement shall
9 be stayed pending final resolution of the appeal or other appellate review.

10 D. **No Effect on Employee Benefits.** The Service Awards and Individual
11 Settlement Awards paid to the Named Plaintiff and Class Members shall be deemed not to be
12 pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the
13 employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Named Plaintiff or Class
14 Members. The Parties agree that any Service Awards and Settlement Awards paid to Named Plaintiff
15 and Class Members under the terms of this Agreement do not represent any modification of Named
16 Plaintiff's or Class Members' previously credited hours of service, or other eligibility criteria, under
17 any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
18 Further, any Service Awards or Settlement Awards hereunder shall not be considered "compensation"
19 in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension
20 benefit plan, employee welfare benefit plan sponsored by Defendants, or unemployment benefits.
21 Defendants will not take 401(k) or other benefits deductions from any Service Awards or Individual
22 Settlement Awards.

23 E. **Privacy of Documents and Information.** Named Plaintiff and Named
24 Plaintiff's counsel agree that none of the documents and information provided to them by Defendants
25 shall be used for any purpose other than prosecution of the Class Action.

26 F. **Confidentiality Prior to Preliminary Approval.** The undersigned agree that
27 prior to the date of the filing of the papers in support of Preliminary Approval, they will keep
28 confidential the terms of this Settlement. Named Plaintiff shall be informed that the Settlement is

1 confidential up until the date of the filing of the papers in support of Preliminary Approval, and shall
2 be advised to keep this Settlement confidential. Notwithstanding the foregoing, Named Plaintiff and
3 Class Counsel may inform their immediate family and legal, tax, and financial advisors of this
4 Settlement. However, before disclosing any such information to any such person, Named Plaintiff or
5 Class Counsel (as the case may be) shall advise such person(s) that the information is confidential. The
6 disclosure of this information to any other person shall constitute a breach of this Agreement. Prior to
7 the date of the filing of the papers in support of Preliminary Approval, Class Counsel and Counsel for
8 Defendants may not communicate the terms of this Settlement to Plaintiffs, other than Named Plaintiff,
9 including on websites. Notwithstanding the foregoing, the Parties may discuss the terms of the
10 Settlement in any papers filed with the Court relating to preliminary approval of the Settlement.
11 Defendants may reference this Settlement, prior to Preliminary Approval, in its financial disclosures.
12 The Parties agree that damages from violation of this provision are significant and impossible to
13 calculate. They therefore agree that any violation of this provision shall subject the Named Plaintiff
14 and/or their Counsel to liquidated damages in the amount of Ten Thousand Dollars and No Cents
15 (\$10,000.00) for each such breach.

16 G. **Limited Publicity Following Preliminary Approval.** From and after
17 Preliminary Approval of the Settlement, Class Counsel and Named Plaintiff may only comment
18 regarding the specific terms of this Agreement: (1) as required by law; or (2) as required under the
19 terms of this Agreement. In all other cases, Class Counsel and Named Plaintiff agree to not publicize
20 this Settlement in any way. Neither Named Plaintiff nor Class Counsel shall hold any press conference,
21 make any press release, make statements to the press, publish the settlement on their website, the
22 internet or social media, or in any way affirmatively publicize any information related in any way to
23 the Settlement. The Parties agree that damages from violation of this provision are significant and
24 impossible to calculate. They therefore agree that any violation of this provision shall subject the
25 Named Plaintiff and/or their Counsel to liquidated damages in the amount of Ten Thousand Dollars
26 and No Cents (\$10,000.00) for each such breach. Nothing in this paragraph or any other provision of
27 this Agreement is intended to prevent the Parties from disclosing factual information regarding any
28 claim for sexual harassment, sex discrimination, or retaliation for reporting sexual harassment or sex

1 discrimination pursuant to Code of Civil Procedure § 1001(a)(3). Further, nothing in this Agreement
2 shall prevent Plaintiffs from engaging in any form of concerted activity that is protected by Section 7
3 of the National Labor Relations Act, which is codified at 29 U.S.C. § 157. Information about such
4 rights is available to Plaintiffs on the National Labor Relations Board's website, www.nlr.gov.

5 H. **No Admission by the Released Parties.** Defendants and the Released Parties
6 deny any and all claims alleged in the Action and deny all wrongdoing whatsoever. This Agreement is
7 not a concession or admission and shall not be used against Defendants or any of the Released Parties
8 as an admission or indication with respect to any claim of any fault, concession, or omission by
9 Defendants or any of the Released Parties. Whether or not the Settlement is finally approved, neither
10 the Settlement, nor any document, statement, proceeding or conduct related to this Agreement, nor any
11 reports or accounts thereof, shall in any event be:

12 1. Construed as, offered or admitted in evidence as, or deemed to be
13 evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a
14 presumption, concession, indication, or admission by any of the Released Parties of any liability, fault,
15 wrongdoing, omission, concession, or damage; or

16 2. Disclosed, referred to, or offered or received as evidence against any of
17 the Released Parties, in any further proceeding in the Action, or any other civil, criminal, or
18 administrative action or proceeding, except for purposes of settling the Action pursuant to this
19 Agreement or enforcing the terms of this Stipulation.

20 I. **CIRCULAR 230 DISCLAIMER.** EACH PARTY TO THIS AGREEMENT
21 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
22 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
23 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
24 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
25 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
26 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
27 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
28 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART

1 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
2 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
3 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
4 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
5 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
6 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
7 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT
8 MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
9 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
10 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
11 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
12 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
13 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
14 BY THIS AGREEMENT.

15 J. **Exhibits and Headings.** The terms of this Agreement include the terms set forth
16 in any of the attached Exhibits 1 through 3, which are incorporated by this reference as though fully set
17 forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive
18 headings of any Paragraphs or Sections of this Agreement are inserted for convenience of reference
19 only and do not constitute a part of this Agreement.

20 K. **Amendment or Modification.** This Agreement may be amended or modified
21 only by a written instrument signed by counsel for all Parties or their successors-in-interest. Should the
22 Parties encounter any post-mediation dispute relating in any way to the settlement of the matter, the
23 Parties agree that, prior to dissolving the settlement and reengaging in active litigation, they shall
24 return to Steven J. Serratore for additional, good faith attempts at mediation to resolve the Parties'
25 differences. The Parties shall share the costs of any additional mediation(s), if necessary.

26 L. **Entire Agreement.** This Agreement and the attached Exhibits constitute the
27 entire agreement among these Parties, and no oral or written representations, or warranties or
28

1 inducements, have been made to any Party concerning this Agreement or its Exhibits, other than the
2 representations, warranties, and covenants contained and memorialized in such documents.

3 M. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties
4 warrant and represent that they are expressly authorized by the Parties whom they represent to
5 negotiate this Agreement and to take all appropriate action required or permitted to be taken by such
6 Parties (including the execution of any other documents) pursuant to this Agreement to effectuate the
7 terms of said Agreement. The Parties and their counsel will cooperate with each other and use their
8 best efforts to effect the implementation of the Settlement.

9 N. **Binding on Successors and Assigns.** This Agreement shall be binding upon,
10 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11 O. **California Law Governs.** All terms of this Agreement and the Exhibits
12 attached hereto shall be governed by and interpreted according to the laws of the State of California.

13 P. **Counterparts.** This Agreement may be executed in one or more counterparts
14 and transmitted via email or facsimile. All executed counterparts, their copies and each of them, shall
15 be deemed to be one and the same instrument.

16 Q. **Cooperation and Drafting.** Each of the Parties has cooperated in the drafting
17 and preparation of this Agreement. Hence, in any construction made of this Agreement, the same shall
18 not be construed against any of the Parties.

19 R. **Invalidity of Any Provision.** Before declaring any provision of this Agreement
20 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible,
21 consistent with applicable precedents, so as to define all provisions of this Agreement valid and
22 enforceable.

23 S. **Named Plaintiff's General Release Remains Effective.** Named Plaintiff agrees
24 to sign this Agreement, and by signing this Agreement is bound by the terms herein stated, including
25 without limitation the release set forth in Section X.C. Named Plaintiff shall retain his rights as a Class
26 Member under this Agreement, but understands that should he opt out of the Settlement, he shall waive
27 his right to any recovery of any Service Awards.
28

1 Dated: 01/23/2026

COHELAN KHOURY & SINGER

2
3 By: 

Michael D. Singer

Isam C. Khoury

Maggie K. Realin

4
5
6 Attorneys for Plaintiff,
ANGEL CUELLAR

7
8 Dated: 1/22/2026

9
10
11 By: 

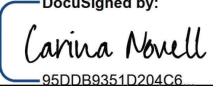
Signed by:

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Angel Cuellar

12
13
14
15 Dated: 1/23/2026

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

16
17
18 By: 

DocuSigned by:

Carina Novell

95DDB9351D204C6

Samantha D. Hardy

Carina L. Novell

Grace E. Sander

19
20 Attorneys for Defendants,
21 NEW BERN TRANSPORT CORPORATION; PEPSI-
22 COLA SALES AND DISTRIBUTION, INC.; and PEPSICO,
INC.

23
24 Dated: 1/21/2026

NEW BERN TRANSPORT CORPORATION

25
26 By: 

Signed by:

Aida Babalola

7D766606D2B94EA...

Aida Babalola

Racquel Martin

EXHIBIT 1

NOTICE OF SETTLEMENT

Angel Cuellar v. New Bern Transport Corporation, et al.

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

Case No. STK-CV-UOE-2024-0008803

TO: Any and all persons who are or were employed as an hourly-paid, non-exempt driver employed by New Bern Transport Corporation in the State of California from July 25, 2020, and ending on December 3, 2025 (“Class Period”).

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHT TO A MONETARY SETTLEMENT ARISING OUT OF YOUR EMPLOYMENT AS AN HOURLY-PAID, NON-EXEMPT DRIVER EMPLOYED BY NEW BERN TRANSPORT CORPORATION IN CALIFORNIA DURING THE CLASS PERIOD.

THIS NOTICE WILL EXPLAIN THE ABOVE OPTIONS IN MORE DETAIL AND INFORM YOU OF IMPORTANT, TIME-SENSITIVE DEADLINES FOR EACH OPTION.

I. INTRODUCTION

If you were employed by Defendant New Bern Transport Corporation in California as a an hourly-paid, non-exempt driver at any time from July 25, 2020, through December 3, 2025 (excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y)) (the “Class Period”), you are a member of the proposed settlement class in this class action lawsuit (“Plaintiff”). Further, if you were employed by Defendant New Bern Transport Corporation in California as a an hourly-paid, non-exempt driver at any time from July 23, 2023 through December 3, 2025 (excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y)) (the “PAGA Period”) you are an Aggrieved Employee and your rights will be affected as set forth in the proposed settlement described in this Notice (the “Settlement”). On [REDACTED], 2026, the Court preliminarily approved the Settlement. You have received this Notice because Defendant’s records show you are a Plaintiff and/or an Aggrieved Employee in this action.

II. NATURE OF THE ACTION

This Action was filed by Named Plaintiff Angel Cuellar (“Named Plaintiff”) in the Superior Court for the State of California, County of San Joaquin, on December 17, 2024, against New Bern Transport Corporation; Pepsi-Cola Sales and Distribution, Inc.; and PepsiCo, Inc. (“Defendants”). Named Plaintiff is represented by Michael D. Singer, Isam C. Khoury and Maggie K. Realin of Cohelan Khoury & Singer; Emil Davtayan of D.Law, Inc.; and David Mara and Jill Vecchi of Mara Law Firm, PC. (“Class Counsel”).

Named Plaintiff’s Operative Complaint alleges the following causes of action: (1) failure to pay minimum, regular, and overtime wages; (2) failure to pay sick leave at correct rate; (3) failure to pay vacation wages; (4) failure to pay reporting time pay; (5) failure to pay split-shift premiums; (6) failure to authorize and permit rest periods; (7) failure to provide compliant meal periods; (8) failure to reimburse business expenses; (9) knowing and intentional failure to comply with itemized wage statement provisions; (10) failure to pay all wages due at termination of employment; (11) violation of the Fair Labor Standards Act; (12) violation of the unfair competition law; and (13) violation of the Private Attorneys General Act (“PAGA”).

Named Plaintiff generally alleges that Defendants failed to fully and timely pay them all wages owed; failed to pay sick leave at the correct rate; failed to provide meal and rest breaks, reimburse for business expenses; etc. On this basis, Named Plaintiff also alleges derivative claims for failure to pay accurate wages upon termination, penalties for incorrect wage statements, and penalties under PAGA. For

these allegedly improper actions, Named Plaintiff is demanding various amounts for wages, penalties, interest, attorneys' fees, and other damages (collectively, the "Claims").

III. POSITIONS OF THE PARTIES

Class Counsel have extensively investigated and researched the facts and circumstances underlying the issues raised in the Action, and the applicable law. Class Counsel recognizes the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Class Counsel has also taken into account the uncertainty and the risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Class Counsel is also aware of the burdens of proof necessary to establish liability for the Claims, of Defendants' defenses, and of the difficulties in establishing damages for the Plaintiffs. Class Counsel also has taken into account the extensive settlement negotiations conducted by Named Plaintiff and Defendants (the "Parties"). Based on the foregoing, Class Counsel believes the proposed Settlement is fair, adequate and reasonable and in the best interests of the Plaintiffs.

Defendants have denied and continue to deny each of the claims and contentions alleged by Named Plaintiff in the Action. Defendants have repeatedly asserted and continue to assert defenses thereto, and have expressly denied and continue to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Defendants also have denied and continue to deny, *inter alia*, the allegations that Plaintiffs have suffered damages; that Defendants failed to fully and timely pay them all wages owed; failed to properly calculate sick leave; failed to reimburse for business expenses; etc.; Defendants also have denied and continue to deny that Defendants engaged in any other wrongful conduct as alleged in the Action, or that Plaintiffs were harmed by the conduct alleged in the Action. Defendants have also concluded that the further defense of this litigation would be protracted and expensive for all Parties. Defendants have, therefore, agreed to settle this Action in the manner and upon the terms set forth in the proposed Settlement to put to rest all claims that are or could have been asserted against it in the Action.

IV. YOUR OPTIONS

Upon receipt of this Notice, you have three options, described in further detail in following sections:

DO NOTHING	You will receive your share of the Settlement's Payout Fund. In exchange for receiving payment from the Payout Fund, you are releasing certain state law claims covered by the Settlement, as well as certain related federal law claims, against Defendants and/or related entities.
EXCLUDE YOURSELF	Receive no Class Payment from the Settlement and retain all rights you may have against Defendants and/or related entities as to state and federal claims. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
OBJECT	Write to the Court about why you don't agree with the Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from the Settlement, and you will release the claims covered by the Settlement, if it is approved by the Court.

V. THE SETTLEMENT

The following is only a summary of the provisions of the proposed Settlement between the Named Plaintiff, the Plaintiffs and Defendants. The specific and complete terms of the proposed Settlement are

described in the Stipulation and Settlement of Class Claims (“Settlement Agreement”), a copy of which is available from the Court’s docket for your review as set forth at the end of this Notice.

The Settlement has a maximum value of \$999,999.00 (Nine-Hundred Ninety-Nine Thousand and Nine Hundred Ninety-Nine Dollars and No Cents) (the “Settlement Fund”). The Settlement Fund is made up of six parts: (1) the total payments to Class Members of the Settlement Awards (the “Payout Fund”); (2) a Fees Award to Class Counsel; (3) a Costs Award to Class Counsel; (4) a Service Award/General Release Payment to the Named Plaintiff; (5) a payment to the Labor Workforce Development Agency; and (6) claims administration expenses. The Payout Fund is explained in this Section. The Fees Award, Costs Award, Service Award, payment to the LWDA, and claims administration expenses are explained in Section VI below.

All Plaintiffs are receiving this Notice. All Plaintiffs who do not request to be excluded from the Settlement as set forth in Section VIII below will be “Class Members.” All Class Members will automatically receive their pro rata share of the Payout Fund.

Approximately \$585,509.33 (Five Hundred Eighty-Five Thousand Five Hundred and Nine Dollars and Thirty-Three cents) (the “Payout Fund”) is available for disbursement to all Plaintiffs. **All Class Members who do not timely and validly opt-out of the class action will receive an Individual Settlement Award.** Individual Settlement Awards will be distributed on a pro-rata basis based on the number of weeks worked by the Class Member as compared to the number of weeks worked by all Class Members. Any partial week worked will be expressed as a percentage of a full workweek.

The records of Defendants reflect that you worked approximately [REDACTED] compensable work weeks as an hourly-paid, non-exempt driver of Defendant New Bern Transport Corporation in California from July 25, 2020, through December 3, 2025 (excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y)). Although the precise amount of payment is subject to change depending on the number of Settlement Class Members and the length of their employment, at this time it is estimated that you will recover approximately \$ [REDACTED] for your Class Payment, and \$ [REDACTED] for your Individual PAGA Payment.

Each Class Member’s Gross Settlement Amount will be divided into a “Gross Wage Portion” and a “Non-Wage Portion.” The Gross Wage Portion shall comprise twenty percent (20%) of each Class Member’s Gross Settlement Amount and the “Non-Wage Portion” shall comprise eighty percent (80%) of each Class Member’s Gross Settlement Amount. From each Class Member’s Gross Wage Portion, payroll deductions will be made for state and federal withholding taxes and any other applicable payroll deductions owed by the Class Member’s employer as a result of the payment. The Settlement Administrator will calculate the net amount paid to each Class Member and is the Class Member’s “Individual Settlement Award.” Subject to Court approval, the Parties anticipate Individual Settlement Awards will be distributed in approximately [REDACTED], 2026.

Each Class Member will receive their Individual Settlement Award by check. The checks shall remain valid and negotiable for one hundred forty (140) days from issuance and may thereafter automatically be canceled if not cashed.

VI. CLASS COUNSEL’S FEES AWARD, SERVICE AWARD, PAYMENT TO THE LWDA, AND SETTLEMENT ADMINISTRATION EXPENSES

A. The amount of attorneys’ fees awarded to Class Counsel will be subject to the Court’s discretion, but in any event, will not exceed Three-Hundred Twenty-Nine Thousand and Nine Hundred Ninety-Nine Dollars and Sixty-Seven Cents (\$329,999.67) (the “Fees Award”). Class Counsel may seek a Costs Award not to exceed \$25,000.00 (Twenty-Five Thousand Dollars and No Cents). Class Counsel will not be permitted to petition the Court for any additional payments for fees, costs or interest and the Fees Award and Costs Award shall be for all claims for attorneys’ fees and costs past, present and future incurred in the Action. The Fees Award and Costs Award will be paid out of and deducted from the Settlement Fund.

As part of the Settlement, you will not be required to pay Class Counsel for their representation of you in the Action.

B. The amount of Service Award/General Release Payment to the Named Plaintiff will be subject to the Court's discretion, but in any event, will not exceed \$10,000.00 (Ten Thousand Dollars and No Cents) each. This Service Award/General Release Payment shall be paid out of and deducted from the Settlement Fund.

C. As part of the preliminary approval of the Settlement, the Court has approved payment of Fifty Thousand Dollars and No Cents (\$50,000.00), 65% of which, or \$32,500.00 (Thirty-Two Thousand Five Hundred Dollars and No Cents) will be paid to the California Labor Workforce Development Agency ("LWDA") and represent the LWDA's share of the Settlement attributable to civil penalties under the California Labor Code's Private Attorneys General Act, Labor Code §§ 2699 *et seq.* ("PAGA"). The remaining \$17,500.00 (Seventeen Thousand Five Hundred Dollars and No Cents) will be added to the Payout Fund and distributed to Class Members as part of their Individual Settlement Amounts.

D. Also as part of the preliminary approval of the Settlement, the Court has approved payment of settlement administration expenses in the amount of up to \$16,990.00 (Sixteen Thousand Nine Hundred and Ninety Dollars and No Cents) to the Settlement Administrator from the Settlement Fund.

VII. BINDING EFFECT/RELEASE OF CLAIMS

As of the Effective Date, the Class Members, including Named Plaintiff, release Defendants and each of their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys and each of their company-sponsored employee benefit plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents (the "Released Parties"), from the "Released Claims." For the purposes of this Agreement, "Released Claims" means any and all claims, demands, rights, liabilities, and causes of action during the Class Period, of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in contract, or for violation of any California or federal statute, rule, or regulation, based on California or federal wage-and-hour laws, whether for economic damages, restitution, penalties, or liquidated damages, arising out of, relating to, or in connection with the Claims pleaded or that reasonably could have been pleaded based upon the facts set forth in the Operative Complaint or any other pleading filed in the Action, including but not limited to any and all claims for unpaid minimum wages; unpaid wages, including straight time wages and overtime wages (including on an off-the-clock, rounding, regular rate calculation, or other theory); sick pay (including the calculation of the rate at which sick pay is paid); vacation pay; unpaid reporting time or split-shift pay; timing of payment (both during and upon termination of employment); meal and rest period claims (including the calculation of the rate at which meal period and rest break penalties are paid); unpaid expense reimbursements; record-keeping violations, and any and all associated penalties and damages (including but not limited to pay stub penalties, waiting time penalties, any other penalties arising under the California Labor Code, and liquidated damages); and claims for alleged unlawful, unfair, and/or fraudulent business practices under California Business and Professions Code section 17200 *et seq.* based on the alleged Labor Code violations; and interest, attorneys' fees and/or costs, at any time during the Class Period, excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y).

VIII. PROCEDURE FOR EXCLUSION

You may exclude yourself from the Settlement by mailing to Apex Class Action Administration located at 18 Technology Drive, Suite 154 Irvine, CA 92618, on or before [DATE], a written statement expressing your desire to be excluded from the Settlement in the *Angel Cuellar v. New Bern Transport Corporation, et al.* litigation. If you wish to request exclusion from the Settlement in this Action, your written statement must include your name (and former names, if any), current address, telephone number, employee ID number or last four digits of your social security number, and the location and dates of your employment by Defendants. In addition, it must be postmarked on or before [DATE]. Requests for

exclusion that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void and ineffective. Persons who are eligible to and do submit valid and timely requests for exclusion from the Settlement will not receive Settlement Awards for their individual labor code claims, nor will they be bound by the terms of the proposed Settlement, if it is approved, or the Final Judgment in this Action, as it relates to their individual labor code claims. However, you cannot be excluded from the PAGA portion of the Settlement, and will receive a Settlement Award for your portion of the PAGA Settlement Amount regardless of whether you exclude yourself.

IX. SETTLEMENT HEARING/OBJECTIONS TO THE PROPOSED SETTLEMENT

A hearing (the "Settlement Hearing") will be held before the Honorable Robert T. Waters on [REDACTED], 2026, at [REDACTED] : [REDACTED] .m. at the Superior Court of the State of California for the County of San Joaquin, 180 E Weber Avenue, San Joaquin, CA 95202 (the "Court"), to determine whether the proposed Settlement of the Action is fair, adequate and reasonable and should be approved by the Court and whether the Action should be dismissed on the merits with prejudice. The hearing may be continued by the Court from time to time as the Court may without further direct notice.

Any Class Member who wishes to object to the Settlement must submit to the Settlement Administrator a written statement objecting to the Settlement. Such written objection must contain the name, address, telephone number, employee ID number or last four digits of the social security number of the person objecting; the location and dates of his/her employment by Defendants; whether the objector has retained an attorney; and if the objector has retained an attorney, the name of the firm, name of the attorney, address, and telephone number. Any Class Member can appear at the Settlement Hearing and voice his/her objection to the Settlement, whether or not he/she had previously submitted a written objection as provided in this section.

Any Class Member who is satisfied with the proposed Settlement need not appear at the Settlement Hearing.

X. EXAMINATION OF PAPERS AND INQUIRIES

The foregoing is only a summary of the Action and the proposed Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Action and the proposed Settlement, you may refer to the pleadings, the Stipulation and Settlement of Class Claims, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the Court, San Joaquin, 180 E Weber Avenue, San Joaquin, CA 95202 during regular business hours of each Court day.

All inquiries by Plaintiffs regarding this Notice and/or the Settlement should be directed to the settlement administrator for this Settlement, or you can also contact Class Counsel listed in section IX above.

Apex Class Action Administration 18 Technology Drive, Suite 154 Irvine, CA 92618 1-800-355-0700 https://apexclassaction.com
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PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES

EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

ANGEL CUELLAR, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

NEW BERN TRANSPORT CORPORATION, a
Delaware Corporation; PEPSI-COLA SALES
AND DISTRIBUTION, INC., a Delaware
Corporation; PEPSICO, INC., a North Carolina
Corporation; and Does 1-10, Inclusive,

Defendants.

Case No. STK-CV-UOE-2404-008803

**[PROPOSED] ORDER GRANTING
PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Assigned for All Purposes to:
Hon. Robert T. Waters
Department 11B

[Complaint Filed: July 25, 2024]
[First Amended Complaint Filed: September 16,
2024]
[Second Amended Complaint Filed: December 17,
2024]
Trial Date: None Set

1 WHEREAS, this action is pending before this Court as a class action (the “Action”); and

2
3 WHEREAS, the Parties have jointly applied to this Court for an order preliminarily approving the
4 settlement of the Action in accordance with a Stipulation and Settlement of Class Claims (the “Stipulation”
5 or “Settlement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a
6 proposed settlement and dismissal of the Action with prejudice upon the terms and conditions set forth
7 therein; and the Court having read and considered the Stipulation and the exhibits annexed thereto;

8
9 NOW, THEREFORE, IT IS HEREBY ORDERED:

10
11 1. This Order incorporates by reference the definitions in the Stipulation, and all terms
12 defined therein shall have the same meaning in this Order as set forth in the Stipulation.

13
14 2. The Court recognizes that the Plaintiffs and Defendants stipulate and agree to certification
15 of a class for settlement purposes only. For settlement purposes only, the Court conditionally certifies the
16 following settlement class (the “Class”): “all hourly-paid, non-exempt drivers employed by New Bern
17 Transport Corporation in California at any time during July 25, 2020, and ending on December 3, 2025,
18 excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802
19 (S.D.N.Y).”

20
21 3. For settlement purposes only, the Court conditionally certifies the following PAGA
22 settlement class (the “PAGA Class”): “all hourly-paid, non-exempt drivers employed by New Bern
23 Transport Corporation in California at any time during July 25, 2023, and ending on December 3, 2025,
24 excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802
25 (S.D.N.Y).”

1 4. The Court finds, for settlement purposes only, the requirements of California Code of Civil
2 Procedure section 382 are satisfied. The term "Class Member" means a Plaintiff who has not requested
3 exclusion from the Settlement.

4
5 5. Named Plaintiff Angel Cuellar ("Named Plaintiff") is hereby appointed and designated, for
6 all purposes, as the representative of the class, and the following attorneys are hereby appointed and
7 designated as counsel for Named Plaintiff and the Class ("Class Counsel"):

8
9 Michael D. Singer
10 Isam C. Khoury
11 Maggie K. Realin
12 COHELAN KHOURY & SINGER
13 605 C Street, Suite 200
14 San Diego, CA 92101
15 Email: msinger@ckslaw.com
16 Email: ikhoury@ckslaw.com
17 Email: mrealin@ckslaw.com

18 Emil Davtyan
19 D. LAW, INC.
20 400 N. Brand Blvd., 7th Floor
21 Glendale, CA 91203
22 Email: Emil@d.law

23 David Mara
24 Jill Vecchi
25 MARA LAW FIRM, PC
26 2650 Camino Del Rio North, Suite 302
27 San Diego, CA 92108
28 Email: dmara@maralawfirm.com
 Email: jvecchi@maralawfirm.com

Class Counsel is authorized to act on behalf of Class Members with respect to all acts or consents required
by, or which may be given pursuant to, the Settlement, and such other acts reasonably necessary to
consummate the Settlement.

6. The Court hereby approves on a preliminary basis the Stipulation and settlement contained
therein, including the definition and disposition of the Settlement Fund and related matters provided for in
the Stipulation. It appears to the Court on a preliminary basis that the settlement amount and terms are fair,

adequate and reasonable as to all potential Class Members when balanced against the probable outcome of further litigation relating to liability and damages issues. It further appears that extensive and costly investigation and research have been conducted such that counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by further prosecution of the Action. It further appears that the Settlement has been reached as the result of intensive, serious and non-collusive, arms-length negotiations.

7. A hearing (the "Settlement Hearing") shall be held before this Court on _____, at _____.m. at the Superior Court of the State of California for the County of San Joaquin, 180 E Weber Avenue, San Joaquin, CA 95202, to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Stipulation is fair, adequate and reasonable and should be finally approved by the Court; whether a Judgment, as provided in the Stipulation, should be entered herein; whether the plan of allocation contained in the Stipulation should be approved as fair, adequate and reasonable to the Class Members; and to finally approve Class Counsel's Fees and Costs Award, the Named Plaintiff's Service Award/General Release Payment, the PAGA payment to the LWDA, and the settlement administration expenses. The Settlement Hearing may be continued without further notice to Plaintiffs. The Parties shall file a Motion for Final Approval and/or a Motion for Attorneys' Fees and Costs on or before _____, 2026.

8. The Court hereby approves, as to form and content, the Notice annexed as Exhibit 1 to the Stipulation. The Court finds that the distribution of the Notice substantially in the manner and form set forth in the Stipulation and this Order meets the requirements of due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

9. The Court hereby appoints Apex Class Action Administration as Settlement Administrator and hereby directs the Settlement Administrator to mail or cause to be mailed to Plaintiffs the Notice by first class mail by no later than thirty (30) calendar days after Preliminary Approval, or receipt of the Class

1 List/Data Report, whichever is later (the "Notice Date") using the procedures set forth in the Stipulation.
2 Plaintiffs who do not opt out of the settlement will become Class Members and will automatically receive
3 their Individual Settlement Awards.

4
5 10. Any Plaintiff may choose to opt out of and be excluded from the Class as provided in the
6 Notice by following the instructions for requesting exclusion from the Class that are set forth in the Notice.
7 All requests for exclusion must be submitted as provided in the Notice. Any such person who chooses to
8 opt out of and be excluded from the Class will not be entitled to any recovery under the Settlement and will
9 not be bound by the Settlement or have any right to object, appeal or comment thereon. Any written
10 request to opt out must be signed by each such person opting out. Class Members who have not timely and
11 validly requested exclusion shall be bound by all determinations of the Court, the Stipulation and
12 Judgment.

13
14 11. Any Class Member may appear at the Settlement Hearing and may object or express his or
15 her views regarding the Settlement, and may present evidence and file briefs or other papers, that may be
16 proper and relevant to the issues to be heard and determined by the Court as provided in the Notice.

17
18 12. To the extent permitted by law, pending final determination as to whether the settlement
19 contained in the Stipulation should be approved, the Plaintiffs, whether directly, representatively, or in any
20 other capacity, whether or not such persons have appeared in the Action, shall not institute or prosecute any
21 Released Claims against the Released Parties. The Settlement is not a concession or admission, and shall
22 not be used against Defendants or any of the Released Parties as an admission or indication with respect to
23 any claim of any fault or omission by Defendants or any of the Released Parties. Whether or not the
24 Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding or conduct
25 related to the Settlement, nor any reports or accounts thereof, shall in any event be:

26
27 a. Construed as, offered or admitted in evidence as, received as or deemed to be evidence for
28 any purpose adverse to the Released Parties, including, but not limited to, evidence of a

1 presumption, concession, indication or admission by Defendants or any of the Released
2 Parties of any liability, fault, wrongdoing, omission, concession or damage; or
3

4 b. Disclosed, referred to, or offered or received in evidence against any of the Released
5 Parties in any further proceeding in the Action, or in any other civil, criminal or
6 administrative action or proceeding, except for purposes of settling the Action pursuant to
7 the Stipulation.
8

9 13. As of the date this Order is signed, all dates and deadlines associated with the Action shall
10 continue to be stayed, other than those related to the administration of the Settlement of the Action.
11

12 14. In the event the Settlement does not become effective in accordance with the terms of the
13 Stipulation, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective
14 for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert
15 to their respective positions as of before entering into the Stipulation.
16

17 15. The Court reserves the right to adjourn or continue the date of the Settlement Hearing and
18 all dates provided for in the Stipulation without further notice to Plaintiffs, and retains jurisdiction to
19 consider all further applications arising out of or connected with the proposed Settlement.
20

21 Dated: _____

22 THE HONORABLE ROBERT T. WATERS
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EXHIBIT 3

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

ANGEL CUELLAR, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

NEW BERN TRANSPORT CORPORATION, a
Delaware Corporation; PEPSI-COLA SALES
AND DISTRIBUTION, INC., a Delaware
Corporation; PEPSICO, INC., a North Carolina
Corporation; and Does 1-10, Inclusive,

Defendants.

Case No. STK-CV-UOE-2404-008803

**[PROPOSED] FINAL JUDGMENT AND
ORDER APPROVING CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Assigned for All Purposes to:
Hon. Robert T. Waters
Department 11B

[Complaint Filed: July 25, 2024]
[First Amended Complaint Filed: September 16,
2024]
[Second Amended Complaint Filed: December 17,
2024]
Trial Date: None Set

1 This matter having come before the Court for hearing pursuant to the Order of this Court dated
2 _____, for final approval of the settlement set forth in the Stipulation and Settlement of Class
3 Claims ("Stipulation" or "Settlement"), and due and adequate notice having been given to the Plaintiffs as
4 required in said Order, and the Court having considered all papers filed and proceedings had herein and
5 otherwise being fully informed of the premises and good cause appearing therefor, it is

6
7 ORDERED, ADJUDGED AND DECREED THAT:

- 8
- 9 1. All terms used herein shall have the same meaning as defined in the Stipulation.
- 10
- 11 2. This Court has jurisdiction over the subject matter of this litigation and over all Parties to
12 this litigation, including all Plaintiffs.
- 13
- 14 3. Distribution of the Notice directed to the Plaintiffs as set forth in the Stipulation and the
15 other matters set forth therein has been completed in conformity with the Preliminary Approval Order,
16 including individual notice to all Plaintiffs who could be identified through reasonable effort, and was the
17 best notice practicable under the circumstances. This Notice provided due and adequate notice of the
18 proceedings and of the matters set forth therein, including the proposed settlement set forth in the
19 Stipulation, to all persons entitled to such Notice, and the Notice fully satisfied the requirements of due
20 process. ____ Plaintiffs objected to the Settlement. ____ Plaintiffs opted out of the Settlement.
- 21
- 22 4. This Court hereby approves the settlement set forth in the Stipulation and finds that the
23 Settlement is, in all respects, fair, adequate and reasonable and directs the Parties to effectuate the
24 Settlement according to its terms. The Court finds that the Settlement has been reached as a result of
25 intensive, serious and non-collusive arms-length negotiations; that the Parties have conducted extensive and
26 costly investigation and research and counsel for the Parties are able to reasonably evaluate their respective
27 positions; and that settlement at this time will avoid additional substantial costs, as well as avoid the delay
28 and risks that would be presented by the further prosecution of these Actions. The Court has reviewed the

1 monetary recovery that is being granted as part of the Settlement and recognizes the significant value to the
2 Class of that monetary recovery. The Court finds that the Class is properly certified as a class for settlement
3 purposes only.

4
5 5. For purposes of this Judgment, the term “Class” means “all hourly-paid, non-exempt
6 drivers employed by New Bern Transport Corporation in California at any time during July 25, 2020, and
7 ending on December 3, 2025, excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et*
8 *al.*, Case No. 22-cv-00802 (S.D.N.Y).”

9
10 6. For settlement purposes only, the Court conditionally certifies the following PAGA
11 settlement class (the “PAGA Class”): “all hourly-paid, non-exempt drivers employed by New Bern
12 Transport Corporation in California at any time during July 25, 2023, and ending on December 3, 2025,
13 excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802
14 (S.D.N.Y).”

15
16 7. The term “Class Member” means a Plaintiff who has not requested exclusion from the
17 Settlement.

18
19 8. As of the Effective Date, each and every Released Claim of each and every Class Member
20 is and shall be deemed to be conclusively released as against the Released Parties. All Class Members as
21 of the Effective Date are hereby forever barred and enjoined from prosecuting the Released Claims against
22 the Released Parties.

23
24 9. The Final Judgment shall bind each Class Member (including Named Plaintiff) and shall
25 operate as a full release and discharge of claims. The Final Judgment shall have a res judicata effect and bar
26 all Class Members from bringing any action asserting Released Claims as specified in the Settlement
27 against Defendants and the Released Parties, and it shall further bar Named Plaintiff only from bringing
28 any action asserting any claims against Defendants and the Released Parties that were released as part of

1 the "General Release" agreed to by Named Plaintiff in the Settlement. Class Members who timely cash or
2 otherwise negotiate their Settlement checks will be deemed to have opted into the Actions for purposes of
3 the FLSA, and their Released Claims shall include any and all claims they may have for unpaid overtime or
4 minimum wages under the FLSA arising during the Class Period.

5
6 10. The Stipulation and Settlement are not an admission by Defendants or any of the other
7 Released Parties, nor is this Judgment a finding, of the validity of any claims in the Action or of any
8 wrongdoing by Defendants or any of the other Released Parties. Neither this Judgment, the Stipulation, nor
9 any document referred to herein, nor any action taken to carry out the Stipulation is, may be construed as,
10 or may be used as an admission by or against Defendants or any of the other Released Parties of any fault,
11 wrongdoing or liability whatsoever. The entering into or carrying out of the Stipulation, and any
12 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
13 evidence of, an admission or concession with regard to the denials or defenses by Defendants or any of the
14 other Released Parties and shall not be offered in evidence in any action or proceeding against Defendants
15 or any of the Released Parties in any court, administrative agency or other tribunal for any purpose
16 whatsoever other than to enforce the provisions of this Judgment, the Stipulation, or any related agreement
17 or release. Notwithstanding these restrictions, any of the Released Parties may file in the Action or in any
18 other proceeding the Judgment, Stipulation, or any other papers and records on file in the Action as
19 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other theory
20 of claim or issue preclusion or similar defense as to the Released Claims.

21
22 11. The Court hereby dismisses the Action on the merits and with prejudice against the Named
23 Plaintiff and all Class Members in favor of Plaintiffs and without costs or attorneys' fees to any of the
24 Parties as against any other settling party, except as provided for in the Stipulation. Without affecting the
25 finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over the
26 interpretation, implementation and enforcement of the Settlement and all orders and judgments entered in
27 connection therewith.

1 12. The Court hereby approves a Service Award/General Release Payment to the Named
2 Plaintiff in the amount of \$_____ each. The Court approves payment to the LWDA in the amount of \$
3 _____. The Court also approves the payment of claims administration expenses in the amount of
4 \$_____.

5
6 13. With respect to attorneys' fees, the Court approves the amount of \$_____ based on a
7 percentage of the recovery method. *See Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 503
8 ("when class action litigation establishes a monetary fund for the benefit of class members, and the trial
9 court in its equitable powers awards class counsel a fee out of that fund, the court may determine the
10 amount of a reasonable fee by choosing an appropriate percentage of the fund created."). The Gross
11 Settlement Amount of \$999,999.00 represents a true common fund, as Defendants are obligated to pay this
12 entire amount, and no portion of the Settlement Fund will revert to Defendants. In addition, the Court finds
13 that \$_____, which represents _____ of the Gross Settlement Amount, is reasonable and
14 appropriate. *See In re Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 558 n.13 ("Empirical studies
15 show that, regardless whether the percentage method or the lodestar method is used, fee awards in class
16 actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66
17 n.11 (recognizing that fee awards in class actions average around one-third of the recovery"). Cross-
18 checking the reasonableness of this amount against Class Counsel's lodestar further supports the
19 reasonableness of the \$_____ attorneys' fees award. *See Laffitte*, 1 Cal.5th at 506 (trial courts have
20 "discretion to conduct a lodestar cross-check on a percentage fee."). Based on Class Counsel's lodestar,
21 which the Court finds is reasonable, an award of \$_____ is reasonable and appropriate.

22
23 14. The Court also finds that the \$_____ in litigation costs incurred by Class Counsel
24 were necessary and appropriate.

25
26 15. Accordingly, Court hereby approves payment of \$_____ in attorneys' fees and
27 \$_____ in litigation costs to Class Counsel.

1 16. After administration of the Settlement has been completed in accordance with the
2 Stipulation and all amounts calculated, and in no event later than one hundred and eighty (180) days after
3 the Check Stale Date, Defendants shall file a report with this Court setting forth the total of the Gross
4 Settlement Amounts for the Class Members and certifying compliance with the terms of the Settlement.
5

6 17. Plaintiff's Motion for Final Approval of Class Action Settlement and Motion for
7 Attorneys' Fees and Costs and Class Representative Service Awards is hereby granted, and the Court
8 directs that a judgment shall be entered in accordance with the terms of this Order.
9

10 18. Judgment in this matter is entered in accordance with the terms of the Settlement
11 Agreement, the Court's Preliminary Approval Order, and this Final Approval Order against Defendants in
12 favor of Plaintiffs and the Settlement Class. This document shall constitute a Judgment for purposes of
13 California Rule of Court 3.769(h). This Judgment is intended to be a final disposition of the above
14 captioned action in its entirety, and is intended to be immediately appealable
15

16 19. The Court finds that the Stipulation is in good faith and constitutes a fair, reasonable and
17 adequate compromise of the Released Claims.
18

19 20. This Court shall retain jurisdiction with respect to all matters related to the administration
20 and consummation of the Settlement, to enforce the terms of the judgment, and any and all claims, asserted
21 in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters
22 related to the Settlement and the determination of all controversies relating thereto.
23

24 21. If the Settlement does not become final and effective in accordance with the terms of the
25 Stipulation, resulting in the return and/or retention of the Settlement Fund to Defendants consistent with the
26 terms of the Settlement, then this Judgment and all orders entered in connection herewith shall be rendered
27 null and void and shall be vacated.
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Dated: _____

THE HONORABLE ROBERT T. WATERS

EXHIBIT B