

RICHARD E. QUINTILONE II (SBN 200995)
GEORGE A. ALOUPAS (SBN 313112)
QUINTILONE & ASSOCIATES
22974 EL TORO ROAD, SUITE 100
LAKE FOREST, CA 92630
TELEPHONE: (949) 458-9675
FACSIMILE: (949) 458-9679
E-MAIL: REQ@QUINTLAW.COM; GAA@QUINTLAW.COM

Attorneys for Plaintiff, AMIR MCNEELY, individually, and on behalf of all employees similarly situated

SEAN BREW (SBN 136733)
ROBERTS & KEHAGIARAS LLP
One World Trade Center, Ste. 2350
Long Beach, CA 90831
Tel: 310.642.9800
E-Mail sb@tradeandcargo.com

Attorneys for Defendants DELUXE AUTO CARRIERS, INC. and EXCEL AUTO TRANSPORT, INC.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

AMIR MCNEELY, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

DELUXE AUTO CARRIERS, INC., a
California Corporation; EXCEL AUTO
TRANSPORT, INC., and Does 1 through 50,
Inclusive,

Defendants

Case No.: CIVDS 1602931

CLASS ACTION

Assigned for All Purposes to:
Honorable Thomas Garza
Dept. S-27

**JOINT STIPULATION FOR CLASS ACTION
SETTLEMENT**

Complaint Filed: March 1, 2016
FAC Filed: April 14, 2016
Trial Date: None set

1 **JOINT STIPULATION FOR CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class Action Settlement and Private Attorney General Act Settlement
3 and Release (“Settlement Agreement” or “Settlement” or “Agreement”) is made and entered into by and
4 between Plaintiff Amir McNeely (“Plaintiff”) and Defendant Deluxe Auto Carriers, Inc. and Defendant
5 Excel Auto Transport, Inc. (Collectively referred to as “Defendant” or “Deluxe”) (collectively with
6 Plaintiff, the “Parties”).

7 **RECITALS**

8 This Settlement Agreement is made and entered into by and between Plaintiff and Defendant, and
9 is subject to the terms and conditions hereof, and to the Court’s approval. The Parties expressly
10 acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising
11 significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by
12 Defendant. If for any reason the Settlement is not approved, it will be of no force or effect, and the
13 Parties shall be returned to their original respective positions.

14 **DEFINITIONS**

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

17 1. **“Action”** means *Amir McNeely v. Deluxe Auto Carriers, Inc.* et al. San Bernardino County
18 **Case No.: CIVDS 1602931**, filed **March 1, 2016**, in California Superior Court, County of San
19 Bernardino, before Hon. Thomas Garza, Dept. S27.

20 2. **“Class Counsel”** means Richard E. Quintilone II, Esq., and George A. Aloupas, Esq. of
21 Quintilone & Associates, 22974 El Toro Road Suite 100, Lake Forest, CA 92630.

22 3. **“Class Counsel’s Fee Award”** means attorneys’ fees agreed approved by the Court for
23 Class Counsel’s litigation and resolution of this Action, and all reasonable costs incurred and to be
24 incurred by Class Counsel in this Action, including, but not limited to, fees, costs and any and all other
25 expenses associated with documenting the Settlement Agreement, securing the Court’s approval of the
26 Settlement Agreement, and obtaining entry of the dismissal terminating this Action. Defendant agrees
27 not to oppose Class Counsel’s request for the Class Counsel’s Fee Award of up to one-third of the Class
28 Settlement Amount, or Two Hundred and Thirty-Five Thousand Nine-Hundred and Fifty dollars and zero

cents (**\$235,950.00**), and costs not to exceed Ten Thousand Dollars and Zero Cents (**\$10,000.00**) subject to the Court's final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals. Any portion of the Class Counsel's Fee Award not awarded to Class Counsel shall be added to the Net Settlement Amount for distribution to the Participating Class Members.

4. **"Class List and Data"** means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within fifteen (15) business days after Preliminary Approval of this Settlement. The Class List shall be formatted in Microsoft Office Excel and shall include each Class Member's full name; most recent mailing address, Social Security Number, and dates of employment as a Class Member.

5. **"Class Member(s)"** or **"Settlement Class"** means all current and former truck drivers who are/were employed by Defendant in the State of California from **March 1, 2012**, through the Court's Preliminary Approval of this Settlement.

6. **"Class Representative Enhancement Payment"** means the amount to be paid to Plaintiff in recognition of his effort and work in prosecuting this Action on behalf of the Class Members and approved by the Court. Defendant agrees not to oppose Class Counsel's request for a Class Representative Enhancement Payment to be paid to Plaintiff from the Class Settlement Amount in the amount of **Ten Thousand Dollars and Zero Cents (\$10,000.00)**, subject to the Court's final approval of this Settlement and subject to the exhaustion of any and all appeals. Any portion of the Class Representative Enhancement Payment not awarded to Plaintiff shall be added to the Net Settlement Amount for distribution to the Participating Class Members.

7. **"Class Settlement Amount"** means the maximum settlement amount of Seven Hundred and Fifteen Thousand Dollars and Zero Cents (**\$715,000.00**) to be paid by Defendant pursuant to the Settlement. The settlement is non-reversionary, meaning none of the settlement amount will revert back to Defendant. The Class Settlement Amount includes all Individual Settlement Payments to Participating Class Members, the Class Representative Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, the PAGA Payment, and Class Counsel's Fee Award. This Class Settlement Amount has been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-upon settlement value of individual claims. In no event will Defendant be liable for more than the Class

1 Settlement Amount. Defendant maintains no reversionary right to any portion of the Class Settlement
2 Amount. Upon the Court's Final Approval of the Settlement, the entire Class Settlement Amount will
3 be paid by Defendant and no part of the Class Settlement Amount will revert to Defendant.

4 8. **"Complaint"** means the operative Complaint filed in this Action.

5 9. **"Counsel for Defendant"** or **"Defense Counsel"** means Sean Brew, Esq., of Roberts &
6 Kehagiaras LLP, PC, One World Trade Center, Ste. 2350, Long Beach, CA 90830.

7 10. **"Court"** means the California Superior Court for the County of San Bernardino, or any
8 other court taking jurisdiction of this Action.

9 11. **"Defendant"** means Defendant Deluxe Auto Carriers, Inc. and Excel Auto Transport, Inc.

10 12. **"Effective Date"** means the earlier of (a) **15 calendar days** after the date of entry of
11 Order granting Final Approval of this Agreement and judgment/dismissal is entered, **if no objection to**
12 **the Agreement is filed;** (b) the date on which the time for all appeals from the Order granting Final
13 Approval and/or the dismissal of the action has passed if an objection is lodged; or (c) if an appeal is
14 taken, the date on which any reviewing court issues a decision, the time for further appeal has expired,
15 and the trial court has regained jurisdiction.

16 13. **"Final Approval"** means the Court order granting final approval of the Settlement.

17 14. **"Individual PAGA Payment"** means each PAGA Member's share of the PAGA
18 Payment allocated for payment to PAGA Members based on the his or her *pro rata* share based on the
19 number of Work Weeks worked from **March 1, 2015**, through Preliminary Approval of the Agreement.

20 15. **"Individual Settlement Payment"** means each Participating Class Member's share of
21 the Net Settlement Amount based on his or her *pro rata* share based on the number of Work Weeks
22 worked by the Participating Class Member from **March 1, 2012** through Preliminary Approval of the
23 Agreement.

24 16. **"Net Settlement Amount"** means the portion of the Class Settlement Amount remaining
25 after deduction of the Court-approved Class Representative Enhancement Payment, Settlement
26 Administration Costs, the PAGA Payment to the LWDA, and Court-approved Class Counsel's Award.
27 The entire Net Settlement Amount will be distributed to Participating Class Members after Final
28 Approval of the Settlement. If the Court approves all of the above listed deductions from the Class

1 Settlement Amount, the Net Settlement Amount that will be completely distributed to the Participating
2 Class Members is estimated to be approximately **\$434,050.00**.

3 17. **"Notice of Objection"** means a Class Member's valid and timely written objection to the
4 Settlement. For the Notice of Objection to be valid, it must be: (a) signed by the Class Member, (b) filed
5 with the Court and served on all parties, and (c) postmarked on or before the Response Deadline.

6 18. **"Notice Packet"** means the Notice of Proposed Class Action Settlement and Final
7 Fairness and Approval Hearing and Mailing Envelope, substantially in the form attached hereto as
8 **Exhibit A**.

9 19. **"PAGA Member(s)"** means all current and former truck drivers who are/were
10 employed by Defendant in the State of California from **March 1, 2015**, through Preliminary Approval
11 of this Settlement.

12 20. **"PAGA Payment"** means the portion of the Class Settlement Amount that the Parties
13 have agreed will be allocated and paid under the California Private Attorney General Act, California
14 Labor Code § 2699 et seq. ("PAGA") as and for consideration of the PAGA Released Claims. The
15 Parties have agreed that Ten Thousand Dollars and Zero Cents (**\$10,000.00**) of the Class Settlement
16 Amount shall be allocated as the PAGA Payment. Pursuant to the PAGA, 75%, or Seven Thousand
17 Five Hundred Dollars and Zero Cents (**\$7,500.00**), of the PAGA Settlement Amount shall be paid to
18 the California Labor and Workforce Development Agency ("LWDA"), and 25%, or Two Thousand
19 Five Hundred Dollars and Zero Cents (**\$2,500.00**), of the PAGA Settlement Amount shall be distributed
20 to all PAGA Members. All PAGA Members will receive his/her *pro rata* share of the 25% of the
21 PAGA Payment based on Work Weeks, regardless of whether or not they are Participating Class
22 Members, as there is no right to opt out of the Court-approved PAGA Released Claims as set forth in
23 Paragraph 51 below.

24 21. **"PAGA Released Claims"** means, all claims, causes of action, damages, wages, benefits,
25 expenses, penalties, debts, rights, demands, liabilities, obligations, attorneys' fees, costs, and any other
26 form of relief or remedy in law, equity, or whatever kind or nature, whether known or unknown, suspected
27 or unsuspected, pursuant to the PAGA that is predicated upon any alleged violations of California Labor
28 Code § 2802, including alleged violations of California Business & Professions Code § 17200 based on

1 California Labor Code § 2802, that occurred at any time between **March 1, 2015**, and date of
2 Preliminarily Approval of this Agreement.

3 22. **“Participating Class Members”** means all Class Members who do not submit valid
4 Requests for Exclusion.

5 23. **“Parties”** means Plaintiff and Defendant collectively.

6 24. **“Plaintiff”** means Amir McNeely.

7 25. **“Preliminary Approval”** means the Court order granting preliminary approval of the
8 Settlement.

9 26. **“Released Claims”** means, any and all of claims, causes of action, damages, wages,
10 benefits, expenses, penalties, debts, rights, demands, liabilities, obligations, attorneys’ fees, costs, and
11 any other form of relief or remedy in law, equity, or whatever kind or nature, whether known or
12 unknown, suspected or unsuspected, arising from, or related to the same set of operative facts as those
13 alleged in the Complaint against Defendant, as follows: (1) all claims for alleged violations of the
14 California Labor Code; (2) all claims for alleged violations of California Business & Professions Code
15 § 17200 which are premised on alleged violations of the Labor Code; and (3) the PAGA Released
16 Claims.

17 27. **“Released Claims Period”** means the period from **March 1, 2012** to the date of
18 Preliminarily Approval of this Agreement.

19 28. **“Released Parties”** means Defendant, and its former and present members, parents,
20 subsidiaries, affiliates, divisions, fiduciaries, corporations in common control, predecessors,
21 successors, and assigns, as well as all past and present officers, directors, employees, partners,
22 shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal representatives,
23 including, but not limited to, DELUXE AUTO CARRIERS, INC. representatives and EXCEL AUTO
24 TRANSPORT, INC.

25 29. **“Request for Exclusion”** means a timely letter submitted by a Class Member indicating
26 a request to be excluded from the Settlement. The Request for Exclusion must: (a) set forth the name,
27 address, telephone number and last four digits of the Social Security Number of the Class Member
28 requesting exclusion; (b) be signed by the Class Member; (c) be returned by mail, email, or fax to the

1 Settlement Administrator at the specified address indicated in the Notice Packet; (d) clearly state that the
2 Class Member does not wish to be included in the Settlement; and (e) be postmarked on or before the
3 Response Deadline.

4 30. **“Response Deadline”** means the deadline by which a Class Member must postmark or
5 fax to the Settlement Administrator valid Requests for Exclusion, or file objections to the Settlement.
6 The Response Deadline will be **thirty (30) calendar days** from the initial mailing of the Notice Packet
7 by the Settlement Administrator. The Response Deadline may be extended only by an Order of the Court,
8 or upon express agreement between Class Counsel and Defense Counsel, and subsequent approval by the
9 Court. Under no circumstances will the Settlement Administrator have the authority to unilaterally
10 extend the deadline for Class Members to submit a Request for Exclusion, or objection to the Settlement.

11 31. **“Settlement Administrator”** means **CPT Group, Inc.**, or any other third-party class
12 action settlement administrator agreed to by the Parties and approved by the Court for the purposes of
13 administering this Settlement. The Parties each represent that they do not have any financial interest in
14 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
15 could create a conflict of interest.

16 32. **“Settlement Administration Costs”** means the costs payable from the Class Settlement
17 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
18 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Class
19 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The
20 Settlement Administration Costs shall be paid from the Class Settlement Amount, including, if necessary,
21 any such costs in excess of the amount represented by the Settlement Administrator as being the
22 maximum costs necessary to administer the Settlement. The Settlement Administration Costs to be paid
23 from the Class Settlement Amount are currently estimated to be Fifteen Thousand Dollars and Zero Cents
24 **(\$15,000.00)**. To the extent actual Settlement Administrations Costs are greater than **\$15,000.00**, such
25 excess amount shall be paid exclusively from the Class Settlement Amount.

26 33. **“Work Weeks”** means the number of weeks of employment for each: (i) Class Member
27 during the Released Claims Period; and (ii) PAGA Member during the period of time commencing
28 **March 1, 2015** through Preliminary Approval. A Work Week will be counted so long as a Class

1 Member and/or PAGA Member was employed at least one day within a Work Week. To the extent any
2 individual is/was both a Class Member and a PAGA Member during the Released Claims Period,
3 overlapping Work Weeks will not be double-counted, but will instead be treated as single Work Weeks.

4 **PROCEDURAL HISTORY AND DISCOVERY**

5 34. On **March 8, 2016**, Plaintiff submitted a PAGA Notice Letter to the LWDA and provided
6 a copy of the Complaint that would be filed to initiate this action and sent the Notice Letter and
7 Complaint by certified mail to Defendant.

8 35. The Complaint which initiated this action was originally filed in the California Superior
9 Court for the County of San Bernardino on **March 1, 2016**. On **May 20, 2016**, Defendant filed its
10 Answer, generally denying the Complaint allegations and asserting 24 affirmative defenses.

11 36. Plaintiff asserted the following claims in the operative Complaint: (1) failure to pay
12 minimum wages in violation of Labor Code § 1194; (2) Failure to Provide Accurate Itemized Wage
13 Statements in violation of Labor Code § 226; (3) Failure to Pay Wages when Due in violation of Labor
14 Code §§ 201-203; (4) Failure to Reimburse Employees for Necessary Business Expenses in violation
15 of Labor Code § 2802; (5) violations of the Unfair Competition Law (California Business and
16 Professions Code § 17200 *et seq.*; and (6) violation of the PAGA. The putative class in the Complaint
17 included all non-exempt, hourly employees working for Defendant from **March 1, 2012** through the
18 date of judgment in the action.

19 37. On **September 23, 2016**, the parties, along with the Plaintiff's attorneys in the case of
20 *Arees Khaterian v. Deluxe Auto Carriers, Inc.* San Bernardino County **Case No.: CIVDS1510115**,
21 filed a stipulation with the Court to consolidate the cases as the claims of the Khaterian Plaintiff are
22 very similar to the claims of the McNeely Class, and the both cases involve the same Defendant. On
23 **September 28, 2016**, the Court consolidated the two cases.

24 38. The Parties engaged in extensive discovery, including written discovery which was
25 propounded to Defendant on **July 5, 2016**. On **August 31, 2016**, Defendant provided its responses.
26 Responses to written discovery and documents served by Defendant were substantial with various
27 documents such as Class Member pay stubs being produced which gave Plaintiff's counsel a chance to
28 estimate the amount of damages that were incurred by the Class Members as a result of the alleged

1 violations of Defendant.

2 39. On **October 11, 2016** the parties filed a Stipulated Protective Order for the Court's
3 approval which detailed the conduct of discovery and use of the documents produced. The parties have
4 also conducted informal discovery in this action, including Defendant providing an updated Class List
5 and work week numbers for the employee Class Members and confirming the policies and practices
6 that were in place during the relevant time period.

7 40. On **February 21, 2017**, the parties attended an all-day mediation in Santa Ana, CA with
8 Michael D. Young, Esq., an extremely skilled and highly-respected mediator in the area of wage and
9 hour class action lawsuits. Although the mediation was not successful on **February 21, 2017**, the
10 mediator stayed persistent, and eventually was able to convince both sides that settlement was in the
11 best interest for all parties involved. After over a year of continued negotiations, a settlement was
12 finally able to be reached on **Friday, April 13, 2018**.

13 **STIPULATION FOR CLASS CERTIFICATION**

14 41. The Parties stipulate and agree to the conditional certification of the Settlement Class
15 with regard to the Released Claims for purposes of Settlement only. Should, for whatever reason, the
16 Court fail to issue Final Approval of the Settlement, the Parties' stipulation to class certification as part
17 of the Settlement shall become null and *void ab initio* and shall have no bearing on and shall not be
18 admissible in connection with the issue of whether or not certification would be appropriate in a non-
19 settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose
20 class certification and the substantive merits of the case should the Court fail to issue Final Approval
21 of the Settlement. Plaintiff expressly reserves his rights and declares that he will continue to pursue
22 class certification and a trial should the Court fail to issue Final Approval of the Settlement.

23 **INADMISSIBILITY OF SETTLEMENT AGREEMENT**

24 42. Whether or not the Court grants Final Approval of the Settlement, neither this
25 Agreement, nor any of its terms, nor any document, statement, proceeding or conduct related to this
26 Agreement, nor any reports or accounts thereof, shall in any event be:

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

1 of a presumption, concession, indication or admission by any of the Released Parties of any
2 liability, fault, wrongdoing, omission, concession or damage except for purposes of settling this
3 Action or enforcing the Released Claims contained herein pursuant to the terms of this
4 Settlement Agreement;

5 (b) Disclosed, referred to or offered or received in evidence against any of the
6 Released Parties in any further proceeding in the Action or any other civil, criminal or
7 administrative action or proceeding except for purposes of settling this Action or enforcing the
8 Released Claims contained herein pursuant to the terms of this Settlement Agreement; or

9 (c) Used in any other way or for any other purpose except for: (i) purposes of settling
10 this action or enforcing the Released Claims contained herein pursuant to the terms of this
11 Settlement Agreement; or (ii) as evidence of relative value of claims in mediation, Preliminary
12 Approval and/or Final Approval when settling matters against parties other than the Released
13 Parties, in which case only public information may be provided.

14 **INVESTIGATION OF THE CLAIMS**

15 43. The Parties have conducted significant investigation of the facts and law both before
16 and after the Action was filed. Such investigations have included exchange of voluminous information
17 pursuant to formal and informal discovery, meetings and conferences, putative class members and
18 potential witnesses. Counsel for the Parties have also further investigated the applicable law as applied
19 to the facts discovery regarding the Released Claims, the defenses thereto, and the damages, penalties
20 and other relief sought by Plaintiff and the Class.

21 **BENEFITS OF SETTLEMENT TO CLASS AND PAGA MEMBERS**

22 44. Plaintiff and Class Counsel have considered the expense and length of continued
23 proceedings necessary to continue this Action against Defendant through trial and any possible appeals.
24 Plaintiff and Class Counsel have also taken into account the uncertainty and risk of the outcome of
25 further litigation, and the difficulties and delays inherent in such litigation, including those involved in
26 class certification. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to
27 establish liability for the Released Claims, Defendant's defenses thereto, and the difficulties in
28 establishing the alleged entitlement to damages, penalties and/or any other remedies by Plaintiff, the

1 Class Members and the PAGA Members. Plaintiff and Class Counsel have also considered
2 recommendations of the Mediator, who is highly experienced in employment litigation, including wage
3 and hour class actions. Based on the foregoing, Plaintiff and Class Counsel have determined that the
4 Settlement set forth in this Agreement is fair, adequate, and reasonable, and is in the best interests of
5 the Settlement Class and PAGA Members.

6 **SETTLEMENT COMPONENTS AND PROCESS**

7 45. Funding of the Class Settlement Amount. Within **ten (10) calendar days** after the
8 Effective Date, Defendant shall make a one-time deposit of the Class Settlement Amount into a Qualified
9 Settlement Account to be established by the Settlement Administrator. The Class Settlement Amount
10 shall be used to pay: (1) the Net Settlement Payment, including the Individual Settlement Payments; (2)
11 Class Counsel's Award; (3) the Class Representative Enhancement Payment; (4) Settlement
12 Administration Costs; and (5) the PAGA Payment.

13 46. Class Counsel's Fee Award. Defendant agrees not to oppose or impede any application
14 or motion to the Court by Class Counsel for the Class Counsel's Fee Award of not more than Two
15 Hundred and Thirty-Five Thousand Nine-Hundred and Fifty dollars and zero cents (**\$235,950.00**), and
16 costs not to exceed Ten Thousand Dollars and Zero Cents (**\$10,000.00**), which shall be paid from the
17 Class Settlement Amount. The Settlement Administrator shall pay to Class Counsel the Class Counsel's
18 Fee Award approved by the Court within fifteen (15) calendar days of Defendant's funding of the Class
19 Settlement Amount. The Settlement Administrator (and not the Defendant) shall issue an IRS Form
20 1099 to Class Counsel reflecting the Class Counsel's Fee Award. Any portion of Class Counsel's Fee
21 Award not approved by the Court shall be added to the Net Settlement Amount.

22 47. Class Representative Enhancement Payment. In recognition of his efforts and work in
23 prosecuting the Action on behalf of Class Members, Defendant agrees not to oppose or impede an
24 application or motion by Plaintiff for a Class Representative Enhancement Payment of up to Ten
25 Thousand Dollars and Zero Cents (**\$10,000.00**). The Class Representative Enhancement Payment, which
26 shall be paid from the Class Settlement Amount, shall be in addition to Plaintiff's Individual Settlement
27 Payment and Individual PAGA Payment paid pursuant to the Settlement like the rest of the Participating
28 Class Members and PAGA Members. The Settlement Administrator shall pay to Plaintiff the Class

1 Representative Enhancement Payment approved by the Court within fifteen (15) calendar days of
2 Defendant's funding of the Class Settlement Amount. The Settlement Administrator (and not the
3 Defendant) shall issue an IRS Form 1099 to Plaintiff reflecting the Class Representative Enhancement
4 Payment. Any portion of Class Representative Enhancement Payment not approved by the Court shall
5 be added to the Net Settlement Amount for distribution to the Participating Class Members.

6 48. Settlement Administration Costs. The Settlement Administrator shall be paid for the
7 reasonable costs of administration of the Settlement and distribution of payments from the Class
8 Settlement Amount, which are capped at Fifteen Thousand Dollars and Zero Cents (**\$15,000.00**). The
9 Settlement Administration Costs, which shall be paid from the Class Settlement Amount, shall include,
10 *inter alia*, the required tax reporting on the Individual Settlement Payments, if any, the issuing of 1099
11 IRS Forms, distributing the Notice Packet, calculating and distributing the Class Settlement Amount and
12 Class Counsel's Award, and providing necessary reports and declarations. Any portion of the Settlement
13 Administration Costs not approved by the Court shall be added to the Net Settlement Amount for
14 distribution to the Participating Class Members.

15 49. PAGA Payment. Subject to Court approval, the Parties agree that the amount of Ten
16 Thousand Dollars and Zero Cents (**\$10,000.00**) from the Class Settlement Amount shall be designated as
17 the PAGA Payment. Within fifteen (15) calendar days of Defendant's funding of the Class Settlement
18 Amount, the Settlement Administrator shall pay 75% of the PAGA Payment (Seven Thousand Five
19 Hundred Dollars and Zero Cents (**\$7,500.00**)) to the LWDA. Within fifteen (15) calendar days of
20 Defendant's funding of the Class Settlement Amount, the Settlement Administrator shall pay 25% of
21 the PAGA Payment (Two Thousand Five Hundred Dollars and Zero Cents (**\$2,500.00**)) to the PAGA
22 Members.

23 (a) In light of the binding nature of a PAGA judgment or settlement on non-party
24 employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969, and *Cardenas v. McLane*
25 *Foodservice, Inc.*, 2011 WL 379413 at *3 (C.D. Cal. Jan. 31, 2011), PAGA Members (whether
26 or not they are Participating Class Members) shall receive their *pro rata* portion of the 25% of
27 the PAGA Payment and will have been deemed to have fully released the PAGA Released
28 Claims. The Settlement Administrator shall mail the checks with the PAGA Payments to each

1 PAGA Member within fifteen (15) calendar days of Defendant's funding of the Class
2 Settlement Amount.

3 (b) To determine each PAGA Member's *pro rata* portion of the PAGA Payment, the
4 Settlement Administrator will use the following formula:

5 Individual PAGA Payment = (\$2,500.00 ÷ Number of Total Work Weeks worked by all PAGA
6 Members from **March 1, 2015** through Preliminary Approval) × Number of total Work Weeks
7 worked by the individual PAGA Member from **March 1, 2015** through Preliminary Approval.

8 50. Net Settlement Amount and Individual Settlement Payments to Participating Class
9 Members. The Net Settlement Amount shall be used to satisfy Individual Settlement Payments to
10 Participating Class Members in accordance with the terms of this Agreement. **Defendant maintains no**
11 **reversionary right to any portion of the Net Settlement Amount.** If there are any timely submitted
12 Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual
13 Settlement Payments for each Participating Class Member so that the amount actually distributed to
14 Participating Class Members equals 100% of the Net Settlement Amount. Within fifteen (15) calendar
15 days of Defendant's funding of the Class Settlement Amount, the Settlement Administrator shall
16 distribute the Individual Settlement Payments to Participating Class Members. To determine each
17 Participating Class Member's *pro rata* portion of the Net Settlement Amount, the Settlement
18 Administrator will use the following formula:

19 Individual Settlement Payment = (Net Settlement Amount ÷ Number of Total Work Weeks
20 worked by all Participating Class Members from **March 1, 2012** through Preliminary Approval)
21 × Number of total Work Weeks worked by the Participating Class Member from **March 1,**
22 **2012** through Preliminary Approval.

23 51. Administration Costs Are Capped. The Parties hereby acknowledge that Settlement
24 Administration Costs are capped at **\$15,000.00**. Any portion of the estimated or designated Settlement
25 Administration Costs that are not in fact required to fulfill the total Settlement Administration Costs shall
26 become part of the Net Settlement Amount.

27 52. No Credit Toward Benefit Plans. The Individual Settlement Payments and PAGA
28 Payments made to Class Members and PAGA Members under this Agreement, as well as any other

1 payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under
2 any benefit plans to which any Class Members may be eligible, including, but not limited to: profit-
3 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
4 plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement will not affect
5 any rights, contributions, or amounts to which any Class Members and/or PAGA Members may be
6 entitled under any benefit plans.

7 53. Settlement Administration Process. The Parties agree to cooperate in the administration
8 of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses
9 incurred in the administration of the Settlement. The Settlement Administrator will provide all services
10 necessary to effectuate the terms of this Agreement including, without limitation, the following:

- 11 a. Establish and maintain an interest bearing Qualified Settlement Fund account.
- 12 b. Calculate the amounts owed to each Participating Class Member and PAGA
13 Member.
- 14 c. Prior to mailing the Notice Packet, the Settlement Administrator will verify the
15 last known address for each Class Member and PAGA Member through a generally utilized, national
16 address update database.
- 17 d. Printing and mailing the Notice Packet.
- 18 e. Maintaining a toll free informational telephone number to assist Class Members
19 who have questions regarding the Notice.
- 20 f. Conducting additional address searches for mailed Notices that are returned as
21 undeliverable. These searches may be done through a class action locator service. To the extent new
22 and more current addresses are found, the Settlement Administrator will also reprint and re-mail Notices
23 accordingly.
- 24 g. Fielding inquiries from Class Members, and administration of any Requests for
25 Exclusion.
- 26 h. Printing and issuance of checks, and preparation of 1099 Forms, and distribution
27 and mailing of all portions of the Class Settlement Amount.
- 28 i. Providing declarations and/or other information to this Court as requested by the

1 Parties and/or the Court.

2 54. Delivery of the Class List and Data. Within **ten (10) calendar days** of Preliminary
3 Approval, Defendant shall provide the Class List and Data to the Settlement Administrator.

4 55. Notice by First-Class U.S. Mail. Within **ten (10) calendar days** after receiving the Class
5 List and Data from Defendant, the Settlement Administrator shall mail a Notice Packet to all Class
6 Members and PAGA Members via regular First-Class U.S. Mail, using the most current, known mailing
7 addresses identified in the Class List.

8 56. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement
9 Administrator shall perform a search based on the National Change of Address Database for information
10 to update and correct for any known or identifiable address changes. Any Notice Packets returned to the
11 Settlement Administrator as non-deliverable on or before the Response Deadline shall be sent promptly
12 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
13 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding address
14 is provided, the Settlement Administrator shall promptly attempt to determine the correct address using
15 a skip-trace, or other search using the name, address and/or Social Security number of the Class Member
16 involved and shall then perform a re-mailing. Those Class Members who receive a re-mailed Notice
17 Packet shall have the later of (i) an additional fifteen (15) calendar days from the re-mailing or (ii) the
18 Response Deadline, whichever is later. The Parties agree to cooperate with the Settlement Administrator
19 to locate more recent address for Class Members and/or PAGA Members, where necessary.

20 57. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
21 will provide: (1) information regarding the nature of the Action, (2) a summary of the Settlement's
22 principal terms, (3) the Settlement Class definition, (4) each Class Member's estimated Individual
23 Settlement Payment and PAGA Payment and the formula for calculating such payments, (5) the dates
24 which comprise the Released Claims Period and PAGA Released Claims Period, (6) instructions on how
25 to submit valid Requests for Exclusion (to the extent applicable), or objections, (7) the deadlines by which
26 the Class Member must submit Request for Exclusions (to the extent applicable) or file and serve Notices
27 of Objection to the Settlement, (8) the date for the final approval hearing, and (9) the scope of the
28 Released Claims.

1 58. Request for Exclusion Procedures. Any Class Member may opt-out from the Settlement
2 by signing a written Request for Exclusion to the Settlement Administrator postmarked within the
3 Response Deadline. Requests for Exclusion must: (1) contain the name, signature, address, telephone
4 number and the last four digits of the Social Security number of the person requesting exclusion; (2)
5 clearly state that the Class Member does not wish to be included in the Settlement; (3) be returned by
6 mail to the Settlement Administrator at the specified address; and (4) be postmarked on or before the
7 deadline. The date of the postmark on the return mailing envelope shall be the exclusive means to
8 determine whether a Request for Exclusion has been timely submitted. By submitting such a Request
9 for Exclusion, a Class Member shall be deemed to have exercised his or her option to opt out of the class
10 action lawsuit and not be bound by this Agreement, except that exercising the option to opt out does not
11 alter the binding nature of the PAGA Released Claims or remedies pursuant to *Arias v. Superior Court*,
12 46 Cal. 4th 969 (2009), and shall not impact his/her entitlement to the *pro rata* portion of the PAGA
13 Payment. Accordingly, a Class Member that timely submits a valid Request for Exclusion will not be
14 entitled to any money under this Settlement other than his/her *pro rata* share of the PAGA Payment. A
15 Class Member who does not timely and properly submit a Request for Exclusion from the Settlement
16 shall be deemed a Participating Class Member and will be bound by all terms of the Settlement, including
17 the releases contained herein.

18 59. Parties' Rights to Void Agreement. If **ten percent (10%)** or more of the Class Members
19 (as calculated as of the time of Preliminary Approval) elect not to participate in the Settlement, Defendant
20 may, at its election, void the Settlement Agreement and all actions taken in furtherance of it will be
21 thereby null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel
22 within fourteen (14) calendar days after the Settlement Administrator notifies the Parties of the total and
23 final number of Requests for Exclusions received after the close of the Response Deadline. If Defendant
24 exercises its right to rescind as set forth in this paragraph, Defendant will solely be responsible for all
25 Settlement Administration Costs incurred as of the date of rescission.

26 60. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
27 who does not timely and properly submit a Request for Exclusion shall be bound by all of the terms of
28 this Settlement, including those pertaining to the Released Claims, as well as any dismissal that will be

1 entered by the Court assuming and after it grants Final Approval.

2 61. Objection Procedures. Any Class Member who does not opt-out of this Settlement shall
3 be entitled to object to the Settlement. To object to the Settlement, a Class Member must file a valid
4 Notice of Objection with the Court and serve copies of the Notice of Objection on the Parties before the
5 Response Deadline. The Notice of Objection must be signed by the Class Member and contain all
6 information required by this Settlement. The postmark date of the filing and service shall be deemed the
7 exclusive means for determining that the Notice of Objection is timely. Class Members who fail to object
8 in the manner specified above shall be deemed to have waived all objections to the Settlement and shall
9 be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement. Class
10 Members who file and serve timely Notices of Objection will have a right to appear at the Final Approval
11 Hearing in order to have their objections heard by the Court, at their own expense. At no time shall any
12 of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
13 objections to the Settlement or appeal from the orders granting Preliminary Approval or Final Approval,
14 or of the dismissal of the Action. Class Counsel shall not represent any Class Members with respect to
15 any such objections to this Settlement. Any Class Member who timely and properly submits a Request
16 for Exclusion shall have no right to object to this Settlement.

17 62. Certification Reports Regarding Individual Settlement Payment Calculations. The
18 Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report which
19 certifies the number of Class Members who have submitted valid Requests for Exclusion. Additionally,
20 the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the
21 administration of the Settlement as needed or requested.

22 63. Distribution Timing of Payments of the Class Settlement Amount. Within 15 calendar
23 days of Defendant's funding the Class Settlement Amount, the Settlement Administrator shall issue
24 payments to (1) Participating Class Members; (2) PAGA Members; (3) the LWDA; (4) Plaintiff; and (5)
25 Class Counsel. The Settlement Administrator shall also issue a payment to itself for Court-approved
26 services performed in connection with the Settlement.

27 64. Uncashed Settlement Payment Checks. Any checks issued by the Settlement
28 Administrator to Class Members and PAGA Members shall be negotiable for not less than one hundred

eighty (180) calendar days from issuance. The Parties agree that California Code of Civil Procedure § 384 is applicable to un-cashed or undeliverable checks. Those funds represented by Settlement Payment Checks returned as undeliverable and those Settlement Payment Checks remaining un-cashed for more than 180 calendar days after issuance will be sent to the California Department of Industrial Relations Unpaid Wages Fund, to be held in trust for the Class Members. In such event, those Class Members will nevertheless remain bound by the Settlement.

65. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

66. Administration Costs if Settlement Fails or is Delayed. If an objection to the Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if the Settlement is not approved by the Court, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

67. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: one-third (33.33%) of each Individual Settlement Payment shall be allocated as wages which will be subject to IRS federal tax withholdings; one third (33.33%) shall be allocated as statutory and civil penalties which are not subject to tax; and the remaining one-third (33.33%) shall be allocated as interest. The amount of all payments to Class Members and PAGA Members shall be reported on an IRS Form 1099 by the Settlement Administrator.

68. Administration of Taxes by the Settlement Administrator. The Settlement Administrator shall be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class Counsel, 1099 forms or other tax forms as may be required by law for all amounts paid pursuant to this Agreement.

69. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff, Participating Class Members and PAGA Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard. Plaintiff, Participating Class Members and PAGA Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their

1 respective payments described herein and will defend, indemnify, and hold Defendant free and harmless
2 from and against any claims resulting from treatment of such payments as non-taxable damages.

3 70. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
4 OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS
5 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
6 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
7 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
8 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL
9 ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
10 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY
11 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING
12 PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT
13 LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION
14 WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
15 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
16 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION
17 OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
18 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
19 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
20 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
21 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
22 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
23 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
24 BY THIS AGREEMENT.

25 71. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
26 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
27 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
28 action or right herein released and discharged.

1 72. Release of Claims

2 A. Release of Claims by Plaintiff. Plaintiff, in exchange for receipt of an Incentive Award,
3 on behalf of himself and his heirs, executors, administrators, and representatives, shall and does hereby
4 forever release, discharge and agree to hold harmless the Released Parties from the Released Claims
5 and any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
6 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and
7 expenses (including attorney fees and costs), known or unknown, at law or in equity, which he may now
8 have or may have after the signing of this Stipulation, against Defendant arising out of or in any way
9 connected with his alleged employment with Defendant, including claims alleged in the
10 Complaint and his relationship with Defendant as an employee driver occurring prior to the date
11 of his signing of this Stipulation. Without limiting the generality of the foregoing, this release
12 shall include, but not be limited to, any and all claims under the (a) Americans With Disabilities
13 Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights
14 Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as
15 amended; (f) the Equal Pay Act; (g) the Employee Retirement Income Security Act, as amended; (h)
16 the Consolidated Omnibus Budget Reconciliation Act; (i) the Rehabilitation Act of 1973; (j) the
17 Family and Medical Leave Act; (k) the Civil Rights Act of 1966; (l) the California Fair Employment
18 and Housing Act; (m) the California Constitution; (n) the California Labor Code; (o) the California
19 Government Code; (p) the California Civil Code; and (q) any and all other federal, state and local
20 statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional,
21 statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful
22 or constructive discharge, breach of contract or implied contract, fraud, misrepresentation,
23 promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under
24 any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for
25 any and all relief, no matter how denominated, including, but not limited to, back pay, front pay,
26 vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages,
27 damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases,
28

1 discharges and agrees to hold harmless Defendant and the Released Parties from any and all claims for
2 attorney fees and costs arising out of the matters released in this Stipulation.

3 B. Release of Section 1542 Rights. It is the desire of the Parties to fully, finally, and forever
4 settle, compromise, and discharge the disputes and claims asserted in the Action against Defendants,
5 including the Released Claims, and the above release of claims provided by this Stipulation includes
6 claims that Plaintiff does not know or suspect to exist in his or her favor against the Released Parties.
7 Plaintiff waives all rights and benefits afforded by Section 1542 as they relate to the Released Claims
8 and does so understanding the significance of that waiver. Section 1542 provides:

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

13 As such, Plaintiff understands and agrees that he is providing the Released Parties with a full and
14 complete release with respect to the Released Claims.

15 C. Release of Claims By Class Members

16 As of the Effective Date, in exchange for the consideration, undertakings, and covenants
17 undertaken by Defendant in this Settlement, the Class Members who do not opt out of the Settlement,
18 including the Named Plaintiff, release Defendant and its subsidiaries, affiliates, parents and attorneys and
19 each of their company-sponsored employee benefit plans, and their respective successors and
20 predecessors in interest, all of their respective officers, directors, employees, administrators, fiduciaries,
21 trustees and agents, and each of their past, present and future officers, directors shareholders, employees,
22 agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and
23 any individual or entity which could be jointly liable with Defendant (all of whom are herein referred to
24 as "Released Parties"), from any and all claims for wages, statutory and civil penalties, damages and
25 liquidated damages, interest, fees and costs that were or could have been alleged based on the facts alleged
26 in the Complaint, during the Class Period, including, but not limited to:

27 (1) claims for alleged misclassification of employees;

28 (2) claims for alleged failure to pay minimum wage;

1 (3) claims for alleged failure to pay overtime compensation;
2 (4) claims related to alleged meal periods worked and not paid, rest periods worked, and meal
3 and/or rest period premiums;
4 (5) claims for alleged failure to reimburse business expenses;
5 (6) claims for alleged unlawful deductions and alleged violations of Labor Code section 221;
6 (7) claims for alleged failure to furnish accurate and timely wage statements and alleged violations
7 of Labor Code Section 226(a);
8 (8) claims for alleged failure to pay all wages owed every pay period and penalties pursuant to
9 Labor Code Section 203;
10 (9) claims for alleged unfair or unlawful business practices;
11 (10) claims for penalties pursuant to Labor Code section 2699; and
12 (11) any penalties, liquidated damages, interest, attorneys' fees, or litigation costs allegedly due
13 and owing by virtue of any of the foregoing. Release of PAGA Released Claims by PAGA
14 Members. Upon the Effective Date, Plaintiff and all PAGA Members, as well as their spouses,
15 heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and shall be deemed
16 to have fully, finally and forever released, settled, compromised, relinquished and discharged any
17 and all of the Released Parties of and from any and all PAGA Released Claims.

18 73. Nullification of Settlement. In the event that the Settlement does not become final for any
19 reason, then this Agreement, and any documents generated to bring it into effect, shall be null and void
20 and any order, judgment and/or dismissal entered by the Court in furtherance of this Agreement shall
21 likewise be treated as void from the beginning.

22 74. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to request
23 the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order: (i) approving
24 of the proposed Settlement, and (ii) setting a date for a Final Approval/Settlement Fairness Hearing. The
25 Preliminary Approval Order shall provide for the Notice Packet to be sent to all Class Members and
26 PAGA Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff
27 shall submit this Agreement, which sets forth the terms of this Settlement, and will include the proposed
28

1 Notice Packet, which shall include the proposed Notice of Class Action Settlement document, attached
2 to this Agreement as **Exhibit A**.

3 75. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit Requests
4 for Exclusion or Notices of Objections to the Settlement, and with the Court's permission, a Final
5 Approval/Settlement Fairness Hearing shall be conducted to determine the Final Approval of the
6 Settlement along with the amounts properly payable for (i) Individual Settlement Payments and PAGA
7 Payments; (ii) the Labor and Workforce Development Agency Payment; (ii) the Class Counsel's Award;
8 (iii) the Class Representative Enhancement Payment; and (iv) all Settlement Administration Costs.
9 Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval. Class
10 Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the
11 final approval hearing.

12 76. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the
13 Court or at the Final Approval/Settlement Fairness Hearing, the Parties shall present a judgment to the
14 Court for its approval in accordance with the terms of this Settlement. After entry of the judgment, the
15 Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
16 enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
17 judgment/dismissal matters as may be appropriate under court rules or as set forth in this Agreement.

18 77. Exhibits Incorporated by Reference. The terms of this Agreement include the terms set
19 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
20 Any Exhibits to this Agreement are an integral part of the Settlement.

21 78. Limited Confidentiality. The Parties and their counsel agree that they will not issue any
22 press releases, initiate any contact with the press, respond to any press inquiry, or have any
23 communication with the press about the fact, amount or terms of the Settlement. In addition, the Parties
24 and their counsel agree that they will not engage in any advertising or distribute any marketing materials
25 relating to the Settlement of this case, including but not limited to any postings on any websites
26 maintained by Class Counsel. Any communication about the Settlement to Class Members prior to the
27 Court-approved mailing of the Notice Packet will be limited to a statement that a settlement has been
28 reached and the details will be communicated in a forthcoming Court-approved Notice Packet. The

1 Parties agree to use their best efforts to schedule a hearing at which to seek Preliminary Approval of
2 the Settlement within 45 days of the date upon which the Parties executed this Agreement. If it is not
3 possible to schedule a hearing regarding Preliminary Approval within that time frame, the Parties agree
4 to schedule the hearing at the first available date thereafter.

5 79. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety of
6 the Parties' Settlement; provided, however, that any individual settlement agreement between the Parties
7 relating solely to Plaintiff and any claims he may have other than those within the Released Claims, shall
8 be binding on the Parties. No other prior or contemporaneous written or oral agreements may be deemed
9 binding on the Parties.

10 80. Amendment or Modification. This Agreement may be amended or modified only by a
11 written instrument signed by the Parties or their successors-in-interest.

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

21 82. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to
22 the benefit of, the successors or assigns of the Parties hereto, as previously defined.

23 83. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
24 governed by and interpreted according to the laws of the State of California.

25 84. Execution and Counterparts. This Agreement is subject only to the execution of all
26 Parties. However, the Agreement may be executed in one or more counterparts. All executed
27 counterparts and each of them, including facsimile and scanned copies of the signature page, shall be
28 deemed to be one and the same instrument provided that counsel for the Parties shall exchange among

1 themselves original signed counterparts.

2 85. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
3 Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this Settlement
4 after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant
5 factors, present and potential. The Parties further acknowledge that they are each represented by
6 competent counsel and that they have had an opportunity to consult with their counsel regarding the
7 fairness and reasonableness of this Agreement.

8 86. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
9 the Court shall first attempt to construe the provision as valid to the fullest extent possible consistent with
10 applicable precedents so as to define all provisions of this Agreement valid and enforceable. Any invalid,
11 illegal, or unenforceable provision determined by the Court shall in no way affect any other provision
12 if Defendant and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in
13 writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in
14 this Agreement.

15 87. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
16 Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's Award below the amount
17 Class Counsel requests from the Court, and either Party may appeal any Court order that materially alters
18 the Agreement's terms.

19 88. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute
20 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering
21 into this Agreement, Defendant does not admit, and specifically denies, it has violated any federal, state,
22 or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
23 applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty;
24 engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
25 its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations
26 connected with it, shall be construed as an admission or concession by Defendant of any such violations
27 or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms
28 of this Agreement, this Agreement and its terms and provisions shall not be offered or received as

1 evidence in any action or proceeding to establish any liability or admission on the part of Defendant or
2 to establish the existence of any condition constituting a violation of, or a non-compliance with, federal,
3 state, local or other applicable law.

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

7 90. Waiver. No waiver of any condition or covenant contained in this Agreement or failure
8 to exercise a right or remedy by any of the Parties hereto shall be considered to imply or constitute a
9 further waiver by such party of the same or any other condition, covenant, right or remedy.

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

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

20 93. Representation by Counsel. The Parties acknowledge that they have been represented by
21 counsel throughout all negotiations that preceded the execution of this Agreement, and that this
22 Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class
23 Counsel warrant and represent that there are no liens on the Agreement.

24 94. All Terms Subject to Final Court Approval. All amounts and procedures described in this
25 Agreement herein shall be subject to Preliminary and Final Approval by the Court.

26 95. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in good
27 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
28 Agreement.

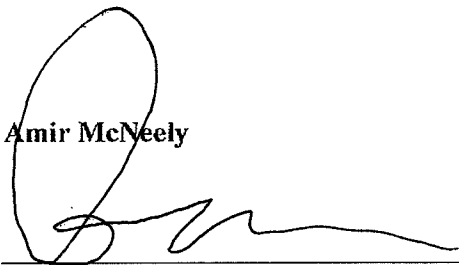
1 96. Binding Agreement. The Parties warrant that they understand and have full authority to
2 enter into this Agreement, and further intend that this Agreement shall be fully enforceable and binding
3 on all Parties and agree that it shall be admissible and subject to disclosure in any proceeding to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

6 97. Precondition: Order Granting *Khaterian* Stipulation:

7 The Parties acknowledge that there is another class action matter that has been consolidated with
8 this Action, namely *Khaterian v Deluxe Auto Carriers, Inc.* (San Bernardino County Superior Court,
9 Case No. CIV DS1510115, herein referred to as "the *Khaterian* Matter"). In the *Khaterian* Matter,
10 there is currently pending before this Court a Joint Stipulation for Entry of Order Severing
11 Consolidation, Dismissing *Khaterian* Class Claims and for Leave to File a First Amended Complaint
12 (The *Khaterian* Stipulation). The Parties acknowledge that Defendant's agreement to the terms
13 contained herein is conditioned upon the court granting the relief requested in the *Khaterian* Stipulation
14 and executing the Order submitted with the *Khaterian* Stipulation. If for any reason the Court denies
15 the relief requested in the *Khaterian* Stipulation, the Defendant shall have the right to withdraw entirely
16 from the terms and stipulations contained herein.

17
18 **SIGNATURES:**

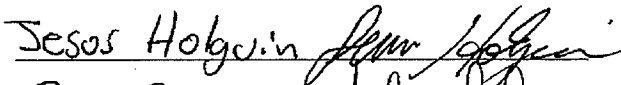
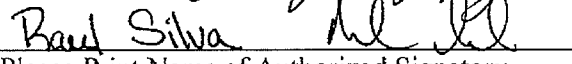
19
20
21 Dated: 6/21/18


Amir McNeely

Plaintiff Amir McNeely

22
23
24 **Deluxe Auto Carriers, Inc.**

25
26 Dated: 06.20.18



Please Print Name of Authorized Signatory

Excel Auto Transport , Inc.

Dated: 06.20.18

Jesús Holguín
Raul Silva
Please Print Name of Authorized Signatory

APPROVED AS TO FORM

QUINTILONE & ASSOCIATES

Dated: 6/21/18

By: Richard E. Quintilone II
Attorneys for Plaintiff and the Class

ROBERTS & KEHAGIARAS LLP

Dated: By:

Sean Brew
Attorney for Defendant Deluxe Auto Carriers, Inc. and
Excel Auto Transport, Inc.

Excel Auto Transport , Inc.

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

QUINTILONE & ASSOCIATES

Dated: _____

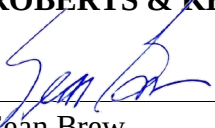
By: _____

Richard E. Quintilone II
Attorneys for Plaintiff and the Class

ROBERTS & KEHAGIARAS LLP

Dated: June 20, 2018

By: _____


Sean Brew
Attorney for Defendant Deluxe Auto Carriers, Inc. and
Excel Auto Transport, Inc.