

MEMORANDUM OF UNDERSTANDING

The parties in, *Willie Marquez, et al v. Accurate Delivery Systems, Inc.*, Case No. CIVSB2125337, (the “Action”), are settling this Action on the following general terms, which will be memorialized in a long-form settlement agreement and shall be subject to court approval. NOW, THEREFORE, Plaintiffs Willie Marquez, Ahdy Mikhael, and Julio Garcia (“Plaintiffs”) and Defendant Accurate Delivery Systems, Inc. (“Defendant”) hereto agree as follows:

1. Settlement Type and Amount: The Parties conditionally agree that Defendant shall pay a “Gross Settlement Amount” for the entire action of \$900,000.00. The Gross Settlement Amount shall include: (a) attorneys’ fees of up to one-third of the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause); (b) Plaintiffs’ reasonable verified litigation costs and expenses; (c) reasonable third-party administration costs; (d) a PAGA payment in the amount of \$30,000.00, from which 75% will be paid to the Labor Workforce Development Agency (with the remaining 25% to “aggrieved employees”); and (e) class representative enhancement payment to each Plaintiff in an amount not to exceed \$10,000 (or a total of \$30,000). Once these deductions have been made, the remaining amount shall be paid to the Class Members who do not opt out and shall be known as the “Net Settlement Amount.” This Gross Settlement Amount is **non-reversionary**. This Settlement Agreement shall become effective on the latter of: (a) the Court’s final approval of the settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c) the final resolution of any appeal that has been filed (“Effective Date”). Defendant agrees to pay the Settlement Amount in 24 equal monthly installments of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) each (“Settlement Installment). The first Settlement Installment shall be due within ninety (90) days of Defendant executing this MOU and will be deposited with a mutually-selected Settlement Administrator in an escrow account set up by it, and with the second

through twenty-fourth Settlement Installment payments due every thirty (30) days thereafter. The employer's share of payroll taxes and any increase to the Gross Settlement Amount due pursuant to the Escalator Clause shall be deposited with the third-party administrator along with the twenty-fourth and final payment.

2. Accelerator Clause: In the event that the Gross Settlement Amount and all employer-side taxes are not paid in full as required under Paragraph 1 of this Agreement, after Defendant's counsel receives written notice of the default, and given ten (10) days to cure, then at Plaintiff's option the Settlement, Final Approval Order, and Judgment may be enforced by remedies available and Defendant agrees to the payment of reasonable attorneys' fees and costs necessary in enforcing the Agreement. Additionally, after Defendant's counsel receives written notice of the default, and given ten (10) days to cure and does not cure, all further payments owed under the Settlement shall be accelerated and due and payable immediately.

3. Financial Status: The Parties agree that this Settlement is conditioned upon Plaintiffs' counsel's review of Defendant's declaration to confirm it is consistent with the representations made by Defendant at the mediation. To the extent the declaration is not consistent with the representations made at mediation, Plaintiffs have the sole right to withdraw from this Settlement. Following the execution of this MOU, the Parties agree to meet and confer regarding Defendant providing a declaration under oath confirming the various data points and information discussed during mediation. Defendant agrees to cooperate and provide any declarations and/or necessary information regarding the payment plan in support of preliminary approval and/or final approval should the Court request additional information regarding the payment plan.

4. Class Definition: The Settlement Class is defined as follows:

All current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California between August 18, 2017 and the earlier of the date

of preliminary approval or June 7, 2023 (the “Class Period”).

5. Individual Settlement Payments: The Individual Settlement Payments shall be calculated based upon a mutually agreeable calculation formula in the long-form settlement agreement.

6. Taxes: Settlement payments made to eligible class members will be attributed 80% as penalties and interest and reported on a 1099 form and 20% will be attributed to wages and reported on a W-2 form. The Class Members are responsible for their share of the payroll taxes, which shall be deducted from their individual settlement payments. Defendant is responsible for the employer share of payroll taxes, separate and apart from the Gross Settlement Amount, and these taxes will not be deducted from the Gross Settlement Amount.

7. No Admission of Lack of Merit or Liability: Plaintiffs do not admit that Plaintiffs’ claims lack merit. Defendant enters into this conditional Settlement and executes this MOU with no admission of liability whatsoever, and solely for the purposes of compromising and settling the Action.

8. Release by Class Members: All Class Members who have not opted out will release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys from all claims, demands, rights, liabilities and causes of action that were pled in the Complaints in the Action, that arose during the Class Periods defined above with respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods, failure to record meal break; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods, failure to separately pay premiums for rest periods under commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment; (g) failure to issue accurate, itemized wage statements; (h) failure to pay non-productive time under commission pay plan; (i) unlawful or improper rounding in

work time recording; (j) miscalculation of regular rate of pay; (k) failure to provide paid sick leave or to pay for sick leave and (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above. The Release Period is the same as the Class Period described in paragraph 2. The Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

9. PAGA Release by Aggrieved Employees: "PAGA Employees" shall be defined as "all current and former non-exempt, Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California between August 18, 2020 and the earlier of the date of preliminary approval or June 7, 2023 (the "PAGA Period"). All Aggrieved Employees (including those who have opted out) will release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys from all claims, demands, rights, liabilities and causes of action under California Labor Code Private Attorneys General Act of 2004 as asserted in the operative complaint that arose during the PAGA Period premised on the facts, claims, causes of action or legal theories described above. The release period for the PAGA claim shall be the PAGA Period.

10. Release by Plaintiffs: Plaintiffs shall be bound by a complete and general release of claims as to Defendant, and shall also be bound by a Section 1542 release and waiver of all claims known and unknown. Notwithstanding the foregoing, the waiver and release in this agreement does not apply to: (i) those rights as a matter of law that cannot be waived, including, but not limited to, workers' compensation claims; (ii) rights or claims arising out of this MOU after this Agreement is executed by Plaintiffs; and (iii) rights or claims arising of this MOU. The Agreement in no way affects Plaintiffs' entitlement and/or

benefits to be received by Plaintiffs in any workers' compensation pursuant to the jurisdiction of workers' compensation. Plaintiffs also agree to not request an exclusion from this settlement.

11. Settlement Administrator: The Parties agree to a mutually agreeable Settlement Administrator. The Settlement Administrator shall be paid from the Gross Settlement Amount.

12. Payment to the LWDA: The payment to the Labor Workforce Development Agency shall be paid from the Gross Settlement Amount.

13. Opt-Out Period: Class Members shall have sixty (60) days to opt out or object to the settlement, in writing. Defendant will provide class contact information (names, addresses, phone numbers, social security numbers, positions held, dates of employment and/or workweek information) to the Settlement Administrator to assist the settlement process within twenty (20) days of the court signing the preliminary approval order.

14. Returned or Uncashed Checks: Any check sent to a Class Member that is not negotiated within one hundred eighty (180) days of mailing to a Class Member shall be transferred to the California's Secretary of State Controller's Office – Unclaimed Property Fund under the unclaimed property laws in the name of the Class Member.

15. Escalator Clause: Defendant represents that there are an estimated 14,814 workweeks during the Class Period. If the number of workweeks during the Class Period is more than 10% greater than this figure (i.e., if there are 16,296 or more workweeks) worked by the settlement Class Members), Defendant agrees to increase the Gross Settlement Amount on a pro rata basis (i.e., if there was 11% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%).

16. Cooperation: The Parties agree to work cooperatively, diligently and in good faith to ensure that all necessary documents are timely filed. Class Counsel shall draft settlement documents for distribution within thirty (30) days of the execution of this Memorandum. Class Counsel shall draft and

file a motion for preliminary approval within sixty (60) days.

17. Enforceability: The Parties will prepare and execute a long-form Settlement Agreement. Nevertheless, the Parties intend that this MOU be enforceable pursuant to the provisions of Code of Civil Procedure §664.6, subject to Court approval and that the time within which to bring this action to trial under CCP Section 583.310 shall be extended for a period of not less than one (1) year starting from the date of the signing of this agreement by all parties until the entry of the final approval order and judgment or if not entered the date this agreement shall no longer be of any force or effect.

18. Enforcement Action: In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Memorandum of Understanding or to declare rights and/or obligations under this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions. The parties agree not to object to any Court filings consistent with this Agreement. The parties further agree that upon signing the litigation will be stayed for all purposes. The Parties further stipulate to consolidate the Class Action with the Consolidated PAGA Action, file a consolidated Class and PAGA Complaint, and seek approval of the settlement in the resulting Consolidated Class and PAGA Action.

19. Confidentiality Provision: Parties and attorneys will keep the settlement confidential through the date the motion for preliminary approval is filed. Thereafter, the parties will agree to make no comments to the media or otherwise publicize the terms of the settlement.

20. Effective Date of Releases: The effective date of all releases shall be the date on which Defendant fully funds the Gross Settlement Amount and employer's share of payroll taxes.

21. The Parties' settlement and this MOU are conditioned upon the Court's approval. If for any reason the Court denies approval with prejudice of the Settlement, any portion of the Gross Settlement Amount deposited by Defendant with the Administrator as of that date of denial shall be

returned to Defendant in full.

22. Execution in Counterparts: This Agreement may be executed in one or more counterparts by facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Dated: March __, 2023

Accurate Delivery Systems, Inc.

By: _____

Title: _____


Dated: March __, 2023

Willie Marquez

Dated: March __, 2023

Ahdy Mikhael

Dated: March 7, 2023



Julio Garcia (Mar 7, 2023 16:30 PST)

Julio Garcia