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16 individually and on behalf of all others similarly situated

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF ALAMEDA**

19 BRIAN THOMAS RUFF, individually and  
20 on behalf of all others similarly situated and  
all aggrieved employees,

21 Plaintiff,

22 v.

23 WILSON LOGISTICS, INC.; and DOES 1  
24 through 10, inclusive,

25 Defendants.

Case No. 22CV008614

Assigned for all purposes to:  
The Hon. Tara Desautels

Dept. 16

**JOINT STIPULATION OF SETTLEMENT  
AND RELEASE OF CLAIMS**

1 **TABLE OF CONTENTS**

2 JOINT STIPULATION OF SETTLEMENT AND RELEASE OF CLAIMS ..... 1

3 I. DEFINITIONS..... 1

4 II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION ..... 8

5 A. Plaintiff’s Claims. .... 8

6 B. Defendant’s Responsive Pleadings. .... 9

7 C. Discovery, Investigation, and Research..... 9

8 D. Mediation. .... 10

9 E. Allegations of Plaintiff and Benefits of Settlement. .... 10

10 F. Defendant’s Denial of Wrongdoing and Liability. .... 11

11 G. Intent of the Settlement. .... 12

12 III. CONDITIONAL CLASS AND COLLECTIVE CERTIFICATION AND APPOINTMENT

13 OF CLASS COUNSEL AND CLASS REPRESENTATIVE. .... 12

14 A. The Classes. .... 12

15 1. The California Class. .... 12

16 2. The FLSA Collective. .... 12

17 B. Appointment of Class Counsel and Class Representative. .... 12

18 C. Stipulation Not Evidence. .... 13

19 IV. SETTLEMENT CONSIDERATION ..... 13

20 A. Gross Settlement Amount. .... 13

21 B. Payment to Settlement Class Members..... 13

22 1. Tax Treatment of Payments ..... 13

23 2. No Responsibility for Tax Liability or Advice. .... 14

24 C. Enhancement Award for Plaintiff. .... 14

25 D. Administrative Expenses. .... 14

26 E. Class Counsel’s Attorney’s Fees and Costs..... 15

27 F. PAGA Payment..... 15

28 V. RELEASES AND WAIVERS..... 15

A. Release of Claims by Settlement Class Members..... 15

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

B.	General Release by Plaintiff. ....	16
VI.	FILING AN AMENDED COMPLAINT. ....	17
VII.	MOTIONS FOR COURT APPROVAL.....	17
A.	Preliminary Approval.....	17
B.	Final Approval. ....	17
C.	Settlement Not Approved. ....	18
1.	Approval Denied—Negotiated Modified Proposal. ....	18
2.	Approval Denied—No Modification Possible.....	18
D.	Dismissal with Prejudice of the Action. ....	18
E.	Dismissal with Prejudice of the Federal Case.....	18
VIII.	NOTICE TO CLASS MEMBERS AND SETTLEMENT ADMINISTRATION. ....	18
A.	Class List.....	18
B.	Settlement Administration. ....	19
C.	Notice to Class Members.....	20
D.	Calculation of Estimated Individual Settlement Amounts.....	21
1.	FLSA Collective Settlement Amount. ....	21
2.	California Class Pro-Rata Amount. ....	21
3.	Estimated Individual Settlement Amount.....	21
E.	Opt-In Procedure.....	22
F.	Opt-Out Procedure.....	22
G.	Objections. ....	23
H.	Disputes.....	24
IX.	PAYMENT BY DEFENDANT OF THE GROSS SETTLEMENT AMOUNT AND GROSS SETTLEMENT AMOUNT DISTRIBUTION. ....	25
A.	Qualified Settlement Fund. ....	25
B.	Provision of Final Order to Settlement Administrator.....	25
C.	Wire Transfer of Gross Settlement Amount. ....	25
D.	Allocation of Gross Settlement Amount.....	25
1.	Administrative Expenses. ....	25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2.	Plaintiff’s Enhancement Award.....	25
3.	Class Counsel’s Attorney’s Fees and Costs.....	25
4.	PAGA Payment to the LWDA.....	25
5.	The Net Settlement Amount. ....	26
	a.    FLSA Collective Settlement Amount. ....	26
	b.    California Class Pro-Rata Amount. ....	26
E.	Time for Payment from the Gross Settlement Amount. ....	26
	1.    Payment of the PAGA Payment to the LWDA. ....	26
	2.    Payment of the Enhancement Award.....	26
	3.    Payment of Attorney’s Fees and Costs. ....	26
	4.    Payment of Administrative Expenses. ....	27
	5.    Payment of the Individual Settlement Amounts. ....	27
F.	Returned and Uncashed Individual Settlement Amount Checks.....	27
X.	NULLIFICATION OF THIS STIPULATION.....	28
	A.    Non-Approval of the Stipulation. ....	28
	B.    Plaintiff’s Right to Reject the Settlement. ....	29
	1.    Period to Consider Terms of Agreement. ....	29
	2.    Revocation of Agreement. ....	29
	3.    Plaintiff’s Option to Blow-Up the Settlement. ....	29
	C.    Defendant’s Right to Blow-Up the Settlement. ....	29
XI.	MISCELLANEOUS PROVISIONS.....	29
	A.    Duties of the Parties. ....	29
	1.    Mutual Full Cooperation.....	29
	2.    Duty to Support and Defend the Stipulation.....	30
	3.    Duties Prior to Court Approval.....	30
	a.    Class Counsel.....	30
	b.    Defense Counsel. ....	30
	B.    Different Facts. ....	30

1  
2  
3  
4  
5  
6  
7  
8  
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11  
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14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

C. No Prior Assignment.....31  
D. Non-Admission. ....31  
E. Public Comments Regarding the Litigation or the Stipulation.....31  
F. Non-Retaliation.....32  
G. Construction.....32  
H. Governing Law. ....32  
I. Notices. ....32  
J. Captions and Interpretations. ....33  
K. Modification.....33  
L. Integration Clause. ....33  
M. Successors and Assigns.....33  
N. Class Counsel Signatories.....33  
O. Corporate Signatories.....34  
P. Execution in Counterparts.....34  
Q. Attorney Fees, Costs, and Expenses. ....34  
R. Action to Enforce Stipulation. ....34  
S. Continuing Jurisdiction.....34



1 but not limited to: (1) failure to pay the statutory minimum wage for all hours worked, Cal. Labor Code  
2 §§1194, 1197, 1194.2; (2) failure to pay overtime wages, Cal. Labor Code §§510, 1194, 1198;  
3 (3) failure to provide meal periods, Cal. Labor Code §226.7, IWC Wage Order No. 9-2001(12), Cal.  
4 Code Regs. Title 8 §11090); (4) failure to provide rest breaks, Cal. Labor Code §226.7, IWC Wage  
5 Order No. 9-2001(11); (5) failure to pay wages upon separation of employment within the required  
6 time, Cal. Labor Code §§201, 202, 203, 210; (6) failure to furnish accurate itemized wage statements,  
7 Cal. Labor Code §§226, 226.2; (7) failure to reimburse all business expenses, Cal. Labor Code  
8 §2800, 2802; (8) unlawful deductions of wages, Cal. Labor Code §221; (9) violation of Unfair  
9 Competition Law (UCL), Bus. & Prof. Code §§17200, *et seq.*; (10) violations of PAGA, Cal. Labor  
10 Code §§2698, *et seq.*, and (11) failure to pay wages and the minimum wage under the FLSA, 29 U.S.C.  
11 §§201, *et seq.*

12 **6. Class Action Complaint.** “Class Action Complaint” shall mean the Class Action  
13 Complaint originally filed by Plaintiff on December 21, 2021, in the Superior Court of the State of  
14 California, County of Alameda, Case No. 21CV004428, and removed by Defendant on February 17,  
15 2022, to the U.S. District Court for the Northern District of California, Case No. 3:22-cv-00988-WHO.

16 **7. Class and Collective Representative.** “Class and Collective Representative” shall  
17 mean Plaintiff in his capacity as representative of the Classes.

18 **8. Class Claims.** “Class Claims” shall mean the claims pled by Plaintiff against Defendant  
19 in the Class Action Complaint.

20 **9. Class Counsel.** “Class Counsel” shall mean Lebe Law, APLC, 2650 777 S. Alameda  
21 Street, Second Floor, Los Angeles, California 90021.

22 **10. Class List.** “Class List” shall mean the list of names, Social Security numbers, last-  
23 known addresses, phone numbers, and email addresses, and contract lease and termination dates of  
24 Class Members.

25 **11. Class Members.** “Class Members” shall mean all individuals who resided in California  
26 and signed an Independent Contractor Operating Agreement (ICOA) with Defendant and performed  
27 transportation services for Defendant under the ICOA during the Class Period.

28 **12. Class Notice.** “Class Notice” shall mean the Notice of Class, Collective and

1 Representative Action Settlement and Final Approval Hearing, as set forth in the form of **Exhibit 1**  
2 attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members.

3 **13. Class Period.** “Class Period” shall mean June 26, 2017, through the date the Court  
4 enters preliminary approval of the Settlement or 60 days from February 27, 2023, whichever occurs  
5 first.

6 **14. Collective Period.** “Collective Period” shall mean December 21, 2018, through the date  
7 the Court enters preliminary approval of the Settlement or 60 days from February 27, 2023, whichever  
8 occurs first.

9 **15. Complaint.** “Complaint” shall mean the First Amended Class, Collective, and  
10 Representative Complaint to be filed in this Action.

11 **16. Court.** “Court” shall mean the Superior Court for the State of California for the County  
12 of Alameda.

13 **17. Days.** “Days” shall mean calendar days.

14 **18. Defense Counsel.** “Defense Counsel” shall mean Christopher J. Eckhart, Scopelitis,  
15 Garvin, Light, Hanson & Feary, P.C., 10 West Market Street, Suite 1400, Indianapolis, Indiana 46204.

16 **19. Effective Date.** “Effective Date” shall be the date when all of the following events have  
17 occurred: (a) this Stipulation has been executed by all Parties and by Class Counsel and Defense  
18 Counsel; (b) the Court has given preliminary approval to the Settlement; (c) Notice has been given to  
19 the Class Members providing them with an opportunity to opt-out of the Settlement; (d) if more than  
20 eight (8) Class Members opt-out, and Defendant has elected not to exercise its rights to void the  
21 settlement; (e) if there is a 10% or more increase in the number of workweeks between the mediation  
22 date and the Class Period end date and Plaintiff has elected not to exercise his right to void the  
23 settlement; (f) the Court has held a Final Approval and Fairness Hearing and entered a final order and  
24 judgment approving this Stipulation; (g) Plaintiff and Defendant have stipulated to the dismissal of the  
25 Federal Case with prejudice; and (h) in the event there are written objections filed prior to the Final  
26 Approval and Fairness Hearing that are not later withdrawn, the later of the following events: (i) when  
27 the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed  
28 without any appeal, writ, or other appellate proceeding having been filed; or (ii) any appeal, writ, or



1 other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with  
2 no right to pursue further remedies or relief; or (iii) any appeal, writ, or other appellate proceeding has  
3 upheld the Court’s final order with no right to pursue further remedies or relief. In this regard, it is the  
4 intention of the Parties that the Settlement shall not become effective until the Court’s order approving  
5 the Settlement is completely final and there is no further recourse by an appellant or objector who seeks  
6 to contest the Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (g)  
7 have been completed.

8           **20. Enhancement Award.** “Enhancement Award” shall mean an additional monetary  
9 payment provided to Plaintiff, not to exceed \$15,000.00, for the general release he is providing  
10 Defendant, and his efforts on behalf of the Classes in this Action, as approved by the Court.

11           **21. Estimated Individual Settlement Amount.** “Estimated Individual Settlement  
12 Amount” shall mean the Individual Settlement Amount originally calculated by the Settlement  
13 Administrator after preliminary approval of the Settlement and presuming all Class Members will  
14 participate in the Settlement as Settlement Class Members, and will appear on the Class Notice sent to  
15 Class Members.

16           **22. Federal Case.** “Federal Case” shall mean the Class Action Complaint, which is pending  
17 in the U.S. District Court for the Northern District of California, Case No. 3:22-cv-00988-WHO.

18           **23. FLSA.** “FLSA” shall mean the Fair Labor Standards Act, 29 U.S.C. §§201, *et seq.*

19           **24. FLSA Claims.** “FLSA Claims” shall mean all claims asserted by Plaintiff against  
20 Defendant under the FLSA in the Complaint.

21           **25. FLSA Collective.** “FLSA Collective” shall mean: All Class Members who opt-in to the  
22 FLSA portion of the Settlement.

23           **26. FLSA Collective Settlement Amount.** “FLSA Collective Settlement Amount” shall  
24 mean \$500, the amount the Parties have determined each Settlement Class Member who opts-in to the  
25 FLSA Collective shall receive in exchange for the release of their claim(s) under the FLSA according  
26 to this Stipulation.

27           **27. Final Approval and Fairness Hearing.** “Final Approval and Fairness Hearing” shall  
28 mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

1           **28. Gross Settlement Amount.** “Gross Settlement Amount” shall mean **\$1,250,000.00**,  
2 which will be all-inclusive, including Individual Settlement Amounts to all Settlement Class Members  
3 that Defendant will pay in connection with this Settlement, in exchange for the release of the Settlement  
4 Class Members’ Claims. The Gross Settlement Amount shall be used to satisfy all of Defendant’s  
5 liabilities arising from the Settlement, including interest, Class Counsel’s attorney’s fees and costs,  
6 Administrative Expenses, Plaintiff’s Enhancement Award, civil penalties recoverable under PAGA,  
7 any filing fees incurred by Defendant in this Action to secure approval of the Settlement, and the Net  
8 Settlement Amount. Defendant will have no obligation to pay any amount in connection with this  
9 Settlement apart from the Gross Settlement Amount.

10           **29. Hearing on Preliminary Approval.** “Hearing on Preliminary Approval” shall mean  
11 the hearing held on the motion for preliminary approval of the Settlement.

12           **30. IRS.** “IRS” shall mean the U.S. Internal Revenue Service.

13           **31. Individual Settlement Amount.** “Individual Settlement Amount” shall mean the  
14 settlement payments the Settlement Administrator calculates and sends to Settlement Class Members  
15 after the Effective Date.

16           **32. LWDA.** “LWDA” shall mean the California Labor and Workforce Development  
17 Agency.

18           **33. Net Settlement Amount.** “Net Settlement Amount” shall mean the Gross Settlement  
19 Amount less (a) Class Counsel’s claim for attorneys’ fees, not to exceed 33 1/3% of the Gross  
20 Settlement Amount or \$416,666.67, as approved by the Court; (b) Class Counsel’s reasonable claim  
21 for costs and expenses, not to exceed \$22,500, as approved by the Court; (c) an Enhancement Award  
22 to Plaintiff, not to exceed \$15,000.00, as approved by the Court; (d) Administrative Expenses, not to  
23 exceed \$15,000, as approved by the Court; (e) the PAGA Payment to the LWDA of \$75,000.00; and  
24 shall be the maximum amount to be distributed to Settlement Class Members.

25           **34. Notice of Estimated Individual Settlement Amount.** “Notice of Estimated Individual  
26 Settlement Amount” shall mean the notice sent to Class Members of their Estimated Individual  
27 Settlement Amount.

28           **35. Opt-In Consent Form.** “Opt-In Consent Form” shall mean the form mailed as part of

1 the Class Notice that a Class Member must mail by the Opt-Out, Opt-In, and Objection Deadline, to  
2 receive an FLSA Collective Settlement Amount, which is attached hereto as **Exhibit 2**.

3 **36. Opt-Out(s).** “Opt-Out(s)” shall mean any and all Class Members who timely and  
4 validly request exclusion from the Settlement in accordance with the terms of the Notice.

5 **37. Opt-Out, Opt-In, and Objection Deadline.** “Opt-Out, Opt-In, and Objection  
6 Deadline” shall mean the date by which Class Members must submit their Opt-Out Request, and/or  
7 their Opt-In Consent Form, or if a Settlement Class Member objects to the fairness of the Settlement,  
8 the date by which such Settlement Class Member must file their written objection with the Court, all  
9 of which shall be 60 days after the Settlement Administrator mails the Notice.

10 **38. Opt-Out Request.** “Opt-Out Request” shall mean a timely and valid request for  
11 exclusion from the Settlement in accordance with the terms of the Class Notice.

12 **39. PAGA.** “PAGA” shall mean the California Private Attorneys General Act, Cal. Labor  
13 Code §§2698, *et seq.*

14 **40. PAGA Payment.** “PAGA Payment” shall mean the \$100,000.00 allocated for the  
15 settlement and full release of any and all claims for civil penalties that could have been made in this  
16 Action by the Settlement Class Members under PAGA.

17 **41. PAGA Payment to the LWDA.** “PAGA Payment to the LWDA” shall mean the  
18 \$75,000.00 from the PAGA Payment that will be paid to the LWDA.

19 **42. Parties.** “Parties” shall mean Plaintiff and Defendant.

20 **43. Plaintiff.** “Plaintiff” shall mean Plaintiff Brian Thomas Ruff.

21 **44. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon  
22 which the Court enters an order preliminarily approving this Settlement.

23 **45. Released Claims.** “Released Claims” shall mean all wage and hour claims under federal  
24 and state law that were brought or could have been brought in this Action based on the facts alleged in  
25 the Complaint, and any amendments thereto, including claims under the California Labor Code for  
26 unpaid minimum wages, unlawful deductions from wages, unreimbursed business expenses, failure to  
27 provide meal and rest breaks, unpaid rest breaks, derivative claims under California Labor Code  
28 §§ 203, 204 and 226 or any similar section, failure to keep records, and penalties under PAGA, as well

1 as claims for unpaid minimum wages under the FLSA for those Settlement Class Members who timely  
2 submit an Opt-In Consent Form. In addition, in exchange for his Enhancement Award, Plaintiff shall  
3 execute a general release of all claims Plaintiff has or might have by virtue of any fact(s), act(s) or  
4 event(s) occurring prior to the date the Court enters judgment. Thus, Plaintiff expressly waives and  
5 relinquishes the provisions, rights, and benefits of California Civil Code §1542 (Section 1542).

6 **46. Released Parties.** “Released Parties” shall mean Defendant, and all its present and  
7 former officers, directors, shareholder, agents, employees, representatives, attorneys, parent  
8 companies, subsidiaries, divisions, affiliates, related companies, successors, and assigns.

9 **47. Remaining Net Settlement Amount.** “Remaining Net Settlement Amount” shall mean  
10 the Net Settlement Amount minus the total FLSA Collective Settlement Amounts to all FLSA  
11 Collective Members.

12 **48. Representative Action Complaint.** “Representative Action Complaint” shall mean the  
13 Representative Action Complaint filed by Plaintiff on March 18, 2022, in this Court and assigned Case  
14 No. 22CV008614.

15 **49. Settlement.** “Settlement” shall mean the class, collective, and representative action  
16 settlement embodied in this Stipulation, which is subject to Court approval.

17 **50. Settlement Administrator.** “Settlement Administrator” shall mean Phoenix Class  
18 Action Administration Solutions, which the Parties have agreed will be responsible for administration  
19 of the Settlement and related matters, or another neutral administrator mutually agreed to by the Parties.

20 **51. Settlement Class Member.** “Settlement Class Member” shall mean any and all  
21 members of the Settlement Classes.

22 **52. Settlement Classes.** “Settlement Classes” shall mean the California Class and the FLSA  
23 Collective.

24 **53. Settlement Amount.** “Settlement Amount” shall mean an amount paid to a Settlement  
25 Class Member from the Net Settlement Amount.

26 **54. Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and Release  
27 of Class Action, including any attached exhibits.

28 **55. Weeks Worked.** “Weeks Worked” shall mean the weeks between a Class Member’s

1 contract date and contract termination date. Partial weeks will count as a week worked.

2 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

3 **A. Plaintiff's Claims.**

4 Plaintiff filed his Class Action Complaint in the California Superior Court, County of Alameda,  
5 on December 21, 2021 (Class Case). The Class Action Complaint alleged the following claims:  
6 (1) failure to pay minimum wages, Cal. Labor Code §§1182.12, 1194, 1194.2, 1197, 1199, and IWC  
7 Wage Order No. 9-2001; (2) failure to pay overtime wages, Cal. Labor Code §§510, 1194, 1198, and  
8 IWC Wage Order No. 9-2001; (3) failure to provide meal periods, Cal. Labor Code §§226.7, 512, and  
9 IWC Wage Order No. 9-2001; (4) failure to provide rest breaks, Cal. Labor Code §226.7, and IWC  
10 Wage Order No. 9-2001; (5) failure to pay wages upon separation of employment and within the  
11 required time, Cal. Labor Code §§201, 202, 203, and IWC Wage Order No. 9-2001; (6) failure to  
12 furnish accurate and itemized wage statements, Cal. Labor Code §226, and IWC Wage Order No. 9-  
13 2001; (7) failure to reimburse business expenses, Cal. Labor Code §2802; (8) unlawful deduction of  
14 wages, Cal. Labor Code §221; and (9) violation of the UCL, Cal. Bus. & Profs. Code §§17200, *et seq.*  
15 On February 17, 2022, Defendant removed the Class Case to the U.S. District Court for the Northern  
16 District of California. After denial of Plaintiff's Motion to Remand and Defendant's Motion to  
17 Transfer, and a case management conference with the Court, the Parties requested that the District  
18 Court stay the case pending mediation.

19 On March 18, 2022, Plaintiff filed his Representative Action Complaint in this Court, alleging  
20 that Defendant should pay penalties under PAGA for its violation of California's wage and hour laws.  
21 Specifically, the Representative Action Complaint alleged that Defendant violated California law by:  
22 (a) misclassifying Plaintiff and other workers as independent contractors; (b) failing to pay minimum  
23 wages for all hours worked; (c) failing to pay overtime wages for all hours worked; (d) failing to  
24 provide lawful meal periods or compensation in lieu thereof; (e) failing to authorize or permit lawful  
25 rest breaks or compensation in lieu thereof; (f) failing to provide accurate itemized wage statements;  
26 (g) failing to reimburse all business expenses; (h) failing to timely pay all wages during employment;  
27 (i) failing to pay all wages due upon separation of employment; (j) failing to provide sick pay;  
28 (k) unlawfully deducting wages; and (l) failing to provide worker's compensation insurance. Upon the

1 Parties' Stipulation, this Court has twice continued the initial case management conference to allow the  
2 Parties time to focus on settlement of Plaintiff's claims.

3 In accordance with Section 2 of the Parties' Memorandum of Understanding (MOU), Plaintiff  
4 will file his Complaint, in which he will plead the claims pled in the Class Action Complaint, the  
5 Representative Action Complaint, and an additional claim under the FLSA. Plaintiff seeks wages,  
6 penalties, liquidated damages, interest, attorney's fees, and litigation costs allegedly due and owing by  
7 virtue of any of the facts asserted in the Complaint and under the statutes cited in the Complaint for the  
8 Class Period.

9 **B. Defendant's Responsive Pleadings.**

10 On February 24, 2022, in the District Court, Defendant filed its Answer, Affirmative Defenses,  
11 and Jury Demand to Plaintiff's Class Action Complaint, and denied and continues to deny any liability  
12 to Plaintiff and the Class Members, and raised various defenses to Plaintiff's Class Action claims. On  
13 April 4, 2022, Defendant filed its Answer and Affirmative Defenses to Plaintiff's Representative  
14 Action Complaint and denied and continues to deny any liability to Plaintiff and the allegedly aggrieved  
15 employees and raised various defenses to Plaintiff's PAGA claims.

16 **C. Discovery, Investigation, and Research.**

17 Class Counsel have conducted discovery and an investigation relating to the Claims during the  
18 prosecution of the Action. This discovery, investigation, and prosecution has included, among other  
19 things: (a) holding multiple meetings with Plaintiff; (b) propounding discovery on Defendant;  
20 (c) inspecting and analyzing documents and data produced by Plaintiff and Defendant; (d) analyzing  
21 the legal positions taken by Defendant and the developments in the law related to preemption of various  
22 provisions of the California Labor Code by federal statutes or regulations; (e) investigating the viability  
23 of class treatment of the Claims, including misclassification under both *Borello & Sons, Inc. v.*  
24 *Department of Industrial Relations*, 48 Cal. 3d 341 (1989), and *Dynamex Operations West v. Superior*  
25 *Court*, 4 Cal. 5th 903 (2018), *reh'g denied* (June 20, 2018), *as codified in* Cal. Labor Code §2775;  
26 (f) engaging in briefing in the District Court on Plaintiff's Motion to Remand and Defendant's Motion  
27 to Transfer; (g) working with Plaintiff on his Declaration in Support of Plaintiff's Opposition to  
28 Defendant's Motion to Transfer; (h) analyzing potential classwide damages prior to the mediation that

1 occurred in this Action; (i) researching the applicable law with respect to the Claims and the potential  
2 defenses thereto; (j) exchanging information and analysis with Defense Counsel in advance of the  
3 mediations; (k) assembling data for calculating damages; and (l) assessing the risk of further litigation  
4 over class certification considering Defendant's misclassification and choice of law defenses,  
5 application of the California Supreme Court's opinions in *Ward v. United Airlines, Inc.* (2020) 9 Cal.  
6 5th 732, 264 Cal. Rptr. 3d 1, 466 P.3d 309, and *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal. 5th 762,  
7 264 Cal. Rptr. 3d 20, 466 P.3d 325, to Plaintiff's and the Class Members' interstate work, and  
8 preemption of Plaintiff's meal period and rest period claims.

9 Class Counsel and Plaintiff have vigorously prosecuted this case, and Defendant has vigorously  
10 contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative  
11 merits of the Claims and Defendant's defenses to them.

12 **D. Mediation.**

13 By agreement and based on classwide data provided by Defendant to Class Counsel, the Parties  
14 mediated this case before Mark Rudy, Esq., a well-known and well-respected mediator, on January 3,  
15 2023. After a full-day mediation, the case did not settle. However, Mr. Rudy presented the Parties with  
16 a mediator's proposal. A week later, Defendant conditionally accepted the proposal, and Plaintiff  
17 accepted the proposal. Over the course of the next several weeks, the Parties memorialized their  
18 agreement in an MOU, which was fully executed on February 27, 2023.

19 **E. Allegations of Plaintiff and Benefits of Settlement.**

20 The District Court motion practice in this case, Defendant's responses to written discovery,  
21 classwide pay and deduction data provided by Defendant to Class Counsel, Defendant's mediation  
22 brief, and positions taken by Defendant during mediation, have given Plaintiff as Class Representative  
23 and Class Counsel a sound understanding of the merits of the case and enough information to evaluate  
24 the strength and weaknesses of the Claims of the Classes.

25 Plaintiff as Class Representative and Class Counsel believe that the claims, causes of action,  
26 allegations, and contentions asserted in the Action have merit. However, Plaintiff as Class  
27 Representative and Class Counsel recognize and acknowledge the expense and delay of continued  
28 lengthy proceedings necessary to prosecute the Action against Defendant through trial and through

1 appeals. Class Counsel has considered the uncertain outcome and the risk of any litigation; the risk of  
2 continued litigation in complex actions such as this, as well as the difficulties and delays inherent in  
3 such litigation; the potential difficulty of certifying the California Class's claims, and, if certified  
4 keeping the claims certified through trial; and the potential difficulty of keeping the FLSA claim  
5 certified throughout the lengthy litigation process. Class Counsel is mindful of the inherent problems  
6 of proof under, and possible defenses to, the Claims alleged in the Action. Class Counsel believes that  
7 the Settlement in this Stipulation confers substantial benefits upon the Classes and that an independent  
8 review of this Stipulation by the Court in the approval process will confirm this conclusion. Based on  
9 their own independent investigation and evaluation, Class Counsel, being experienced in this area of  
10 class action litigation, have determined that the Settlement in the Stipulation is in the best interests of  
11 Plaintiff and the Class Members.

12 **F. Defendant's Denial of Wrongdoing and Liability.**

13 Defendant denies each and every one of the claims and contentions alleged by Plaintiff in the  
14 Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability  
15 against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have  
16 been alleged, in the Action. Defendant contends it complied in good faith with all applicable provisions  
17 of California and federal law cited in the Complaint. Defendant further denies that, for any purpose  
18 other than settling this Action, the Claims are appropriate for class, collective, or representative  
19 treatment. Defendant further denies that it misclassified Plaintiff or the Class Members as independent  
20 contractors and denies that California's misclassification test applies to Plaintiff or the Class Members.

21 Nonetheless, Defendant has concluded that further litigation relating to the Claims would be  
22 protracted and expensive and that it is desirable that the Claims be fully and finally settled in the manner  
23 and upon the terms and conditions set forth in this Stipulation in order to limit further expense,  
24 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the  
25 operation of Defendant's businesses without further expensive litigation and the distraction and  
26 diversion of its personnel with respect to matters at issue in the Action. Defendant has also carefully  
27 considered the uncertainty and risks inherent in any litigation, especially in complex cases such as the  
28 Action. Defendant has, therefore, determined that it is desirable and beneficial that the Claims be settled



1 in the manner and upon the terms and conditions in this Stipulation.

2 **G. Intent of the Settlement.**

3 The Settlement in this Stipulation intends to achieve the following: (a) entry of an order  
4 approving the Settlement and granting the monetary and other relief set forth in this Stipulation to the  
5 Settlement Class Members; (b) entry of judgment and dismissal with prejudice of the Action;  
6 (c) discharge of the Released Parties from liability for any and all of the Claims; (d) discharge of the  
7 Released Parties from liability to Plaintiff under Section 1542; and (e) dismissal of the Federal Case  
8 with prejudice.

9 **III. CONDITIONAL CLASS AND COLLECTIVE CERTIFICATION AND**  
10 **APPOINTMENT OF CLASS COUNSEL AND CLASS REPRESENTATIVE.**

11 **A. The Classes.**

12 **1. The California Class.**

13 For purposes of the Settlement described in this Stipulation and the Settlement of this Action  
14 only, the Parties agree to certification of the California Class as to the Claims brought under California  
15 law pursuant to California Code of Civil Procedure §382. Defendant does not waive, and expressly  
16 reserves, the right to challenge the propriety of class certification, or any other representative treatment  
17 of Plaintiff's claims under California law, for any purpose, should the Court not grant final approval of  
18 the Settlement.

19 **2. The FLSA Collective.**

20 For purposes of the Settlement described in this Stipulation and the Settlement of this Action  
21 only, the Parties agree to conditional certification of the FLSA Collective as to Plaintiff's claims  
22 brought under the FLSA. Defendant does not waive, and expressly reserves, the right to challenge the  
23 propriety of collective certification, or any other representative treatment of Plaintiff's FLSA claims,  
24 for any purpose, should the Court not grant final approval of the Settlement.

25 **B. Appointment of Class Counsel and Class Representative.**

26 For purposes of the Settlement described in this Stipulation and the Settlement of this Action  
27 only, the Parties request that the Court find Plaintiff and Class Counsel adequate to represent the Class  
28 Members under California law. Specifically, Plaintiff is adequate to represent and protect the interests

1 of other members of the Classes because he initiated this litigation, gathered documents and  
2 information, provided a declaration to support his opposition to Defendant's Motion to Transfer,  
3 assisted Class Counsel in preparing the opposition to Defendant's Motion to Transfer, met with his  
4 attorneys to discuss mediation, and reviewed and approved the proposed settlement. (2007) *Capitol*  
5 *People First v. State Dep't of Developmental Servs.*, 155 Cal. App. 4th 676, 696-97. In addition, Lebe  
6 Law APLC has expended considerable time and effort on this case and will continue to do so through  
7 final approval. Defendant does not waive, and expressly reserves, the right to challenge the propriety  
8 class or collective certification and the adequacy of Plaintiff and Class Counsel to represent any Class  
9 or Collective, for any purpose, should the Court not grant final approval of the Settlement.

10 **C. Stipulation Not Evidence.**

11 Evidence of this Stipulation to certification of a California Class and an FLSA Collective for  
12 settlement purposes only will be deemed inadmissible for any other purpose in this or any other  
13 proceeding.

14 **IV. SETTLEMENT CONSIDERATION**

15 **A. Gross Settlement Amount.**

16 Defendant shall fund the Gross Settlement Amount of \$1,250,000, which is non-reversionary.  
17 The Gross Settlement Amount shall constitute adequate consideration for the Settlement and will be  
18 made in full and final settlement of: (1) the Released Claims and any interest thereon; (2) Plaintiff's  
19 Enhancement Award; (3) a general release by Plaintiff; (4) the Administrative Expenses; (5) Class  
20 Counsel's attorney's fees and costs; (6) the PAGA Payment to the LWDA; and (7) any other  
21 obligations of Defendant under this Stipulation. In no event shall Defendant pay more than \$1,250,000.

22 **B. Payment to Settlement Class Members.**

23 Each Settlement Class Member shall receive an Individual Settlement Amount, which shall be  
24 calculated in accordance with Article VIII, Section D, paragraph 5. Defendant represents that, based  
25 on data through September 2, 2022, there are approximately 74 individuals in the Class, including  
26 Plaintiff. Extrapolating the data, the Settlement is based on 5,085 workweeks.

27 **1. Tax Treatment of Payments**

28 Individual Settlement Amounts paid to Settlement Class Members will be treated as non-wage

1 payments reported on IRS Form 1099s. In the event any portion of the Individual Settlement Amount  
2 is ultimately construed by the IRS or any other taxing authority to be wages from which employment  
3 taxes should have been withheld, Defendant will be responsible for payroll taxes normally borne by an  
4 employer for the payments, with funding for such payments coming from outside the Gross Settlement  
5 Amount.

6 **2. No Responsibility for Tax Liability or Advice.**

7 The Released Parties have no responsibility or liability for Class Members' tax liability for any  
8 tax matters relating to any payments made under this Stipulation including, but not limited to, tax advice  
9 and/or the withholding of or reporting of taxes.

10 **C. Enhancement Award for Plaintiff.**

11 Plaintiff may receive an Enhancement Award in an amount up to \$15,000, subject to Court  
12 approval, for his efforts on behalf of the Classes in this Action, including assisting in investigation and  
13 consulting with Class Counsel. Further, in exchange for receipt of an Enhancement Award, Plaintiff  
14 shall execute a general release provided for in this Stipulation, which release will be effective upon the  
15 Effective Date. Any Enhancement Award approved by the Court shall be paid to Plaintiff from the  
16 Gross Settlement Amount and shall be in addition to any distribution to which Plaintiff may otherwise  
17 be entitled as a Settlement Class Member. The Settlement Administrator will report the Enhancement  
18 Award paid to Plaintiff on an IRS Form 1099. Plaintiff shall be responsible for the payment of any and  
19 all taxes with respect to his Enhancement Award and shall hold Defendant harmless from any and all  
20 liability with regard thereto.

21 **D. Administrative Expenses.**

22 All costs and expenses due to the Settlement Administrator in connection with its administration  
23 of the Settlement, including, but not limited to, providing the Notice, locating Class Members,  
24 processing Opt-In Consent Forms, and Opt-Out Requests, and calculating, administering, and  
25 distributing Individual Settlement Amounts to the Settlement Class Members, shall be paid from the  
26 Gross Settlement Amount. The Parties agree to cooperate in the settlement administration process and  
27 to make all reasonable efforts to control and minimize the costs incurred in the administration of the  
28 Settlement. The Settlement Administrator's estimate of its costs and expenses is not to exceed \$15,000.

1           **E.      Class Counsel’s Attorney’s Fees and Costs.**

2           At the time Plaintiff submits the motion for final approval of the Settlement, Class Counsel may  
3 submit a motion for an award of attorneys’ fees not to exceed 33 1/3% of the Gross Settlement Amount,  
4 and for reimbursement of costs not to exceed \$22,500, which will be heard by the Court at the Final  
5 Approval and Fairness Hearing. As a condition of this Settlement, Class Counsel have agreed to pursue  
6 their attorneys’ fees, and costs with respect to the Claims only in the manner reflected by this Section.  
7 Any attorneys’ fees, and costs awarded by the Court shall be paid from the Gross Settlement Amount  
8 and shall not constitute payment to any Class Members. The Settlement is not conditioned on the  
9 Court’s approval of Class Counsel’s motion for attorneys’ fees, and costs, and any amounts that are not  
10 approved for attorneys’ fees, costs, and expenses shall remain part of the Net Settlement Amount.

11           The attorneys’ fees, and costs approved by the Court shall encompass, with respect to the  
12 Claims: (a) fees for all work performed and costs incurred by, or at the direction of, Class Counsel,  
13 Lebe Law, APLC, through the date of this Stipulation; (b) fees for all work to be performed and costs  
14 and expenses to be incurred in connection with approval by the Court of the Settlement, including any  
15 appeal arising out of an objection to the Settlement; and (c) fees for all work to be performed and costs  
16 and expenses, if any, incurred in connection with administering the Settlement through final approval  
17 of the Settlement and dismissal of the Action, with prejudice. The Settlement Administrator will report  
18 the amount paid to Class Counsel on an IRS Form 1099. Class Counsel shall be responsible for the  
19 payment of any and all taxes with respect to any attorney’s fees and costs awarded by the Court.

20           **F.      PAGA Payment.**

21           The PAGA Payment of \$100,000 is allocated to civil penalties recoverable under PAGA by the  
22 Class Members, of which 75%, \$75,000, constitutes the PAGA Payment to the LWDA; and 25%,  
23 \$25,000, will be included in the Remaining Net Settlement Amount to be distributed pro-rata among  
24 the California Class Members.

25           **V.      RELEASES AND WAIVERS.**

26           **A.      Release of Claims by Settlement Class Members.**

27           In exchange for the Gross Settlement Amount, Plaintiff and the Settlement Class Members  
28 release the Released Parties from the Released Claims as of the Effective Date.

1           **B.       General Release by Plaintiff.**

2           In exchange for his Enhancement Award, Plaintiff shall release all claims Plaintiff has or might  
3 have by virtue of any fact(s), act(s) or event(s) occurring prior to the date the Court enters a final order  
4 approving the settlement and judgment. Specifically, Plaintiff, individually and on behalf of himself  
5 and his heirs, executors, administrators, and representatives, shall and does hereby forever release,  
6 discharge, and agree to hold harmless Defendant and the Released Parties from any and all claims,  
7 charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages,  
8 actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including attorney  
9 fees and costs), known or unknown, at law or in equity, which he may now have or may have at the  
10 signing of this Stipulation, against Defendant arising out of or in any way related to the Action, his  
11 alleged employment with Defendant, or contracts with Defendant, including the claims alleged in the  
12 Complaint, and any and all transactions, occurrences or matters between the Parties occurring prior to  
13 the Effective Date. Without limiting the generality of the foregoing, this release shall include, but not  
14 be limited to, any and all claims under the (i) Americans With Disabilities Act, as amended; (ii) Title  
15 VII of the Civil Rights Act of 1964, as amended; (iii) the Civil Rights Act of 1991; (iv) 42 U.S.C. §  
16 1981, as amended; (v) the Age Discrimination in Employment Act, as amended; (vi) the Fair Labor  
17 Standards Act, as amended; (vii) the Equal Pay Act; (viii) the Employee Retirement Income Security  
18 Act, as amended; (ix) the Consolidated Omnibus Budget Reconciliation Act; (x) the Rehabilitation Act  
19 of 1973; (xi) the Family and Medical Leave Act; (xii) the Civil Rights Act of 1966; (xiii) the California  
20 Fair Employment and Housing Act; (xiv) the California Constitution; (xv) the California Labor Code;  
21 (xvi) the California Government Code; (xvii) the California Civil Code; and (xviii) any and all other  
22 federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims  
23 based on constitutional, statutory, common law, or regulatory grounds as well as any other claims based  
24 on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud,  
25 misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress,  
26 or damages under any other federal, state or local statutes, ordinances, regulations, rules, or laws. This  
27 release is for any and all relief, no matter how denominated, including, but not limited to, back pay,  
28 front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages,

1 penalties, punitive damages, damages for pain and suffering, and attorney fees and costs, and the  
2 Plaintiff hereby forever releases, discharge and agrees to hold harmless Defendant and the Released  
3 Parties from any and all claims for attorney fees and costs arising out of the matters released in this  
4 Stipulation.

5 Furthermore, Plaintiff expressly waives and relinquish the provisions, rights, and benefits of  
6 Section 1542, which reads:

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

12 **VI. FILING AN AMENDED COMPLAINT.**

13 Pursuant to Section 2 of the MOU, within 7 days of the date upon which this Stipulation is fully  
14 executed, the Parties will stipulate that Plaintiff may file the Complaint for the purpose of seeking  
15 approval of a classwide, collective-wide, and representative settlement of the Class and FLSA claims,  
16 and the PAGA claim. The Parties agree that Defendant will not file an answer; however, Defendant  
17 denies and continues to deny any and all allegations in the Complaint. In addition, Class Counsel shall  
18 file this Stipulation and request preliminary approval of the Settlement within the timeframe set out in  
19 Article VII, Section A.

20 **VII. MOTIONS FOR COURT APPROVAL.**

21 **A. Preliminary Approval.**

22 Class Counsel will submit this Stipulation to the Court and request preliminary approval of the  
23 Settlement within 21 days of the Court's granting of the Parties' stipulation to allow Plaintiff to file the  
24 Complaint. If preliminary approval is not granted by the Court, Plaintiff will dismiss his Class and  
25 FLSA Claims without prejudice in this Action, and the Parties will proceed as if they had not entered  
26 into this Stipulation.

27 **B. Final Approval.**

28 Class Counsel will request final approval of the Settlement no later than 35 days after the Opt-

1 Out, Opt-In, and Objection Deadline. The Final Approval and Fairness Hearing shall be held in the  
2 Superior Court for the State of California for the County of Alameda, no earlier than 174 days from the  
3 Preliminary Approval Date, on a date to be determined by the Court.

4 At the Final Approval and Fairness Hearing, Class Counsel and Defense Counsel shall jointly  
5 request the Court for the entry of the final order approving the Settlement as being fair, reasonable, and  
6 adequate to the Settlement Class Members within the meaning of Section 382, and the FLSA, and for  
7 the entry of a final judgment of dismissal with prejudice of the Claims consistent with the terms of the  
8 Settlement. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or  
9 evidence as may be required for the Court's determination.

10 **C. Settlement Not Approved.**

11 **1. Approval Denied—Negotiated Modified Proposal.**

12 In the event the Settlement is not preliminarily approved by the Court, the Parties agree to  
13 negotiate in good faith to attempt to modify the proposed Settlement at the direction of the Court.

14 **2. Approval Denied—No Modification Possible.**

15 However, in the event the Settlement is not preliminarily approved by the Court, and no  
16 modification is possible after attempts by the Parties to negotiate in good faith, Plaintiff shall dismiss  
17 the FLSA and Class Claims from this Action without prejudice, and the Parties will proceed with the  
18 Class Claims in the Federal Case.

19 **D. Dismissal with Prejudice of the Action.**

20 The Claims shall be dismissed with prejudice as part of the consideration for the Settlement.  
21 Notwithstanding the dismissal of the Claims with prejudice, the Court shall retain jurisdiction to  
22 interpret and enforce this Stipulation.

23 **E. Dismissal with Prejudice of the Federal Case.**

24 Upon entry of judgment in this Action, Class Counsel and Defense Counsel shall stipulate to  
25 the dismissal with prejudice of Plaintiff's Class Action Complaint in the U.S. District Court for the  
26 Northern District of California, Case No. 3:22-cv-00988-WHO.

27 **VIII. NOTICE TO CLASS MEMBERS AND SETTLEMENT ADMINISTRATION.**

28 **A. Class List.**

1 Defendant shall provide a Class List to the Settlement Administrator within 14 days after entry  
2 and service of an Order Granting Preliminary Approval of this Settlement. The Class List will identify  
3 each Class Member, his or her social security number, last known home address, any last known email  
4 address on record, any last known telephone number on record, and the number of Weeks Worked  
5 credited to each Class Member. The Class List shall be marked “Confidential–Settlement  
6 Administrator’s Eyes Only.”

7 **B. Settlement Administration.**

8 The Settlement Administrator will be responsible for locating correct addresses for the Class  
9 Members; mailing, and emailing the Class Notice to Class Members; handling inquiries from Class  
10 Members concerning the Class Notice or any other issue; preparing, administrating, and distributing  
11 settlement checks to Settlement Class Members; maintaining a website, the address for which will be  
12 included in the Class Notice, and will provide Class Members with a method to opt-in to the FLSA  
13 portion of the Settlement and information on final approval and final judgment; and performing such  
14 other duties as the Parties may direct.

15 On a weekly basis, the Settlement Administrator will provide updates to Class Counsel and  
16 Defense Counsel regarding the number of validated and timely received Opt-In Consent Forms, Opt-  
17 Out Requests and any objections submitted by Class Members. The Settlement Administrator will serve  
18 on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt-In Consent  
19 Forms, Opt-Out Requests, challenges, objections, rescissions of Opt-Out Requests and withdrawal of  
20 objections no later than 7 days after their receipt.

21 No later than 14 days following the Opt-Out, Opt-In and Objection Deadline, the Settlement  
22 Administrator will compile and deliver to Class Counsel and Defense Counsel a final report with  
23 information regarding (a) the final pro-rata portion of the Net Settlement Amount for each Settlement  
24 Class Member, (b) the final number of Opt-Ins and (c) the final number of Opt-Outs. Further, at least  
25 14 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide  
26 Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing  
27 (Declaration) regarding the mailing of the Class Notice, its attempts to locate Class Members, and other  
28 information regarding administration of the Settlement. Specifically, the Declaration shall include the



1 number of Class Members to whom Class Notices were sent, the number of Class Members to whom  
2 Class Notices were not delivered, the number of Opt-In Consent Forms received, the number of Opt-  
3 Out Requests, and the number and form of any objections received, which Class Counsel will file with  
4 the Court no later than 7 days prior to the Final Approval and Fairness Hearing.

5 **C. Notice to Class Members.**

6 As soon as practicable after receiving the Class List, but no later than 28 days after the  
7 Preliminary Approval Date, the Settlement Administrator shall send Class Counsel and Defense  
8 Counsel a summary of its calculations of Estimated Individual Settlement Amounts. Within 35 days of  
9 the Preliminary Approval Date, the Settlement Administrator shall send each Class Member the Class  
10 Notice via first-class, United States mail and by email if an email was provided to the Settlement  
11 Administrator. The Class Notice shall also contain an easily understood statement alerting the Class  
12 Members that, by participating in the Settlement, the Class Member is releasing and waiving all  
13 Released Claims against Defendant. The Class Notice shall further contain an easily understood  
14 statement alerting the Class Members that, by submitting an Opt-In Consent Form, the Class Member  
15 is releasing and waiving all claims under the FLSA against Defendant. In addition to the other  
16 information contained on the Class Notice, the Class Notice shall state the estimated number of Weeks  
17 Worked Defendant calculated from its records for each Class Member, and each Class Member's  
18 Estimated Individual Settlement Amount. The Class Notice shall also include a website address for  
19 Class Members, which they may access to opt-in to the FLSA portion of the Settlement and find  
20 additional information regarding final approval and final judgment in this matter.

21 Any returned envelopes containing the Class Notice from this mailing with forwarding  
22 addresses will be used by the Settlement Administrator to locate Class Members. In the event that, prior  
23 to the Opt-Out, Opt-In, and Objection Deadline, any Class Notice mailed to a Class Member is returned  
24 to the Settlement Administrator as having been undelivered by the U.S. Postal Service, the Settlement  
25 Administrator shall perform a skip trace search and seek an address correction for such Class  
26 Member(s) and a second Class Notice will be sent to any new or different address obtained. It will be  
27 conclusively presumed that, if an envelope containing the Notice has not been returned within 28 days  
28 of the mailing, the Class Member received the Class Notice.

1           **D.     Calculation of Estimated Individual Settlement Amounts.**

2           To calculate Estimated Individual Settlement Amounts, which shall be included with the Class  
3 Notice, the Settlement Administrator shall make the following presumptions and calculations:

4                   **1.     FLSA Collective Settlement Amount.**

5           For purposes of determining Estimated Individual Settlement Amounts, the Settlement  
6 Administrator shall presume that all Class Members will submit Opt-In Consent Forms. Each member  
7 of the FLSA Collective shall receive \$500 in exchange for the release of their FLSA claims against  
8 Defendant.

9                   **2.     California Class Pro-Rata Amount.**

10          After allocating the FLSA Collective Settlement Amounts, to determine the Estimated  
11 Individual Settlement Amount for Claims brought under California law, the Settlement Administrator  
12 will distribute the Estimated Remaining Net Settlement Amount to the Class Members pro-rata based  
13 on the number of weeks each Class Member performed services under contract with Defendant. For  
14 purposes of determining Estimated Individual Settlement Amounts, the Settlement Administrator shall  
15 presume that all Class Members will not opt-out of the Settlement of the Claims brought under  
16 California law, including PAGA.

17                   **a.**     The Settlement Administrator will estimate the Remaining Net  
18 Settlement Amount per Week Worked by dividing the Estimated Remaining Net Settlement Amount  
19 by the total number of Weeks Worked in the Class Period for all Class Members.

20                   **b.**     The Settlement Administrator will estimate each Class Member's share  
21 of the Estimated Remaining Net Settlement Amount, which is exchanged for release of their claims  
22 under California law, including PAGA, by multiplying the Estimated Remaining Net Settlement  
23 Amount per Week Worked by the number of Weeks Worked by the Class Member during the Class  
24 Period.

25                   **3.     Estimated Individual Settlement Amount.**

26          Each Class Member's Estimated Individual Settlement Amount will be the sum of \$500 and  
27 their pro-rata share of the Estimated Remaining Net Settlement Amount.

28 //

1           **E.     Opt-In Procedure.**

2           Class Members who want to receive FLSA Collective Settlement Amounts must complete and  
3 mail to the Settlement Administrator the Opt-In Consent Form included with the Class Notice, or opt-  
4 in through the website, the address for which will be included in the Class Notice. The written Opt-In  
5 Consent Form must contain all the information requested on the form, and each Class Member must  
6 submit their own Opt-In Consent Form for it to be valid. In addition, an Opt-In Consent Form must be  
7 post-marked within the 60-day Opt-Out, Opt-In, and Objection Deadline (within 60 days of the  
8 Settlement Administrator mailing the Class Notice) to be valid. The Settlement Administrator shall  
9 determine the validity of all Opt-In Consent Forms and provide copies of valid Opt-In Consent Form  
10 to Class Counsel and Defense Counsel. Class Counsel shall file all valid Opt-In Consent Forms with  
11 the motion for final approval of the Settlement. None of the Parties, their counsel, nor any person on  
12 their behalf, shall seek to solicit or otherwise encourage anyone to submit an Opt-In Consent Form.

13           In the event any Opt-In Consent Form is timely submitted but does not contain sufficient  
14 information to be valid, within 7 days of receipt of the Opt-In Consent Form, the Settlement  
15 Administrator shall provide the Class Member a letter requesting the information that was not provided  
16 and giving the Class Member 14 days from the mailing of such cure letter to respond. Any invalid  
17 submission that is not timely cured will be considered a nullity.

18           In the event any Opt-In Consent Form is submitted after the Opt-Out, Opt-In, and Objection  
19 Deadline, the Settlement Administrator shall promptly inform Class Counsel and Defense Counsel.  
20 Class Counsel and Defense Counsel shall meet and confer on whether to accept the untimely Opt-In  
21 Consent Form.

22           **F.     Opt-Out Procedure.**

23           This is not a claims-made settlement. Class Members, other than Plaintiff, who wish to exclude  
24 themselves from the Settlement or Opt-Out, must mail to the Settlement Administrator an Opt-Out  
25 Request. The written Opt-Out Request must contain the Class Member's full name, address, telephone  
26 number, email address (if applicable), and last four digits of their social security number, and must be  
27 signed individually by the Class Member. No Opt-Out Request may be made on behalf of a group. An  
28 Opt-Out Request must be post-marked no later than the Opt-Out, Opt-In, and Objection Deadline. Any

1 Opt-Out Requests received after the Opt-Out, Opt-In, and Objection Deadline will be invalid. None of  
2 the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage  
3 anyone to exclude themselves from the Settlement.

4 In the event any Opt-Out Request is timely submitted but does not contain sufficient information  
5 to be valid, the Settlement Administrator shall provide the Class Member, within 7 days, a letter  
6 requesting the information that was not provided and giving the Class Member 14 days from the  
7 mailing of such cure letter to respond. Any invalid submission that is not timely cured will be  
8 considered a nullity.

9 **G. Objections.**

10 The Class Notice shall inform the Class Members of their right to object to the Settlement. Any  
11 Class Member who wishes to object to the Settlement must file and deliver a written objection with the  
12 Court and serve copies of the written objection to Class Counsel and Defense Counsel no later than the  
13 Opt-Out, Opt-In, and Objection Deadline. The date of delivery of the written objection is deemed to be  
14 the date the objection is deposited in the U.S. mail, postage prepaid, as evidenced by the postmark. If  
15 postmark dates differ, the later of the two postmark dates will control. The objection must include the  
16 objector's name, address, telephone number, email address (if applicable), and the case name and  
17 number, and must set forth, in clear and concise terms, a statement of the reasons why the objector  
18 believes that the Court should find that the Settlement is not in the best interest of the Class Members  
19 and the reasons why the Settlement should not be approved, including the legal and factual arguments  
20 supporting the objection. The Class Notice shall advise Class Members that objections shall only be  
21 considered if the Class Member has not opted out of the Settlement; in other words, to file an objection  
22 or voice an oral objection, the Class Member must be a Settlement Class Member. Notwithstanding  
23 the above, a Class Member may make an oral objection to the Settlement by appearing at the Final  
24 Approval and Fairness Hearing and providing such an oral objection either in person or through a  
25 lawyer retained at their own expense. Settlement Class Members who fail to make timely written  
26 objections in the manner specified above, or who fail to make an oral objection and the Final Approval  
27 and Fairness Hearing, shall be deemed to have waived any objections and oppositions to the  
28 Settlement's fairness, reasonableness and adequacy, and shall be foreclosed from making any objection

1 (whether by appeal or otherwise) to the Settlement. However, the requirement that the Settlement Class  
2 Member submit a written objection may be excused by the Court. None of the Parties, their counsel,  
3 nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to object to the  
4 settlement, or appeal from any order of the Court that is consistent with the terms of this Settlement.

5 **H. Disputes.**

6 To the extent that any Class Member disputes the number of Weeks Worked as shown in his or  
7 her Class Notice, such Class Member may produce evidence to the Settlement Administrator  
8 establishing the Work Weeks to which the disputing Class Member believes he or she is entitled. The  
9 deadline for Class Members to submit disputes pursuant to this paragraph is the Opt-Out, Opt-In, and  
10 Objection Deadline. Unless the Class Member presents evidence proving he or she worked more  
11 workweeks than shown by Defendant's records, his/her Individual Settlement Amount will be  
12 determined based on Defendant's records.

13 The Settlement Administrator shall notify counsel for the Parties of any disputes it receives.  
14 Defendant shall review its records and provide further information to the Settlement Administrator, as  
15 necessary and to the extent such information exists in Defendant's records. The Settlement  
16 Administrator shall provide a recommendation to counsel for the Parties stating whether the original  
17 number of Work Weeks credited to the Class Member should stay the same or should change and the  
18 proposed changes. Counsel for the Parties shall then meet and confer in an effort to resolve the dispute.  
19 If the Parties cannot resolve the dispute, they shall present it to the Court for a resolution. The  
20 Settlement Administrator will notify the disputing Class Member of the decision.

21 Any changes to a Class Member's Weeks Worked will be reflected in the total weeks worked  
22 for the entire California Class. For example, if Class Member "A" disputed his or her Weeks Worked  
23 and provides satisfactory evidence that his or her Weeks Worked should be increased by two weeks,  
24 and the Settlement Administrator, in consultation with Defendant, Defense Counsel, and Class Counsel,  
25 agree the records substantiate the Class Member's claim, the total Weeks Worked for the California  
26 Class will be increased by two weeks for purposes of calculating Individual Settlement Amounts.

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1 **IX. PAYMENT BY DEFENDANT OF THE GROSS SETTLEMENT AMOUNT AND**  
2 **GROSS SETTLEMENT AMOUNT DISTRIBUTION.**

3 **A. Qualified Settlement Fund.**

4 The Settlement Administrator shall provide Defense Counsel with an escrow agreement within  
5 7 days of the Preliminary Approval Date to set up a Qualified Settlement Fund (the QFS) that satisfies  
6 the requirements of Treasury Regulation Section 1.468B-1.

7 **B. Provision of Final Order to Settlement Administrator.**

8 Within 7 days after the Effective Date, Class Counsel shall provide a copy of the Final Order  
9 Approving Settlement and Judgment to the Settlement Administrator.

10 **C. Wire Transfer of Gross Settlement Amount.**

11 Within 14 days of the Effective Date, Defendant will remit the Gross Settlement Amount to the  
12 Settlement Administrator by wire transfer. Upon receipt by the Settlement Administrator, these funds  
13 shall be transferred immediately to the QFS. Except for any costs associated with distribution of the  
14 Class Notice, the Gross Settlement Amount, plus any interest earned on the Gross Settlement Amount,  
15 shall be refunded to Defendant if the Settlement does not obtain final approval or otherwise does not  
16 become final, or the Effective Date does not occur.

17 **D. Allocation of Gross Settlement Amount.**

18 The Claims of all Settlement Class Members are settled for the Gross Settlement Amount of  
19 \$1,250,000, which will be allocated as follows:

20 **1. Administrative Expenses.**

21 Administrative Expenses shall not exceed \$15,000.

22 **2. Plaintiff's Enhancement Award.**

23 Plaintiff's Enhancement Award shall not exceed \$15,000, as approved by the Court.

24 **3. Class Counsel's Attorney's Fees and Costs.**

25 Class Counsel's attorney's fees shall not exceed 33 1/3% of the Gross Settlement Amount; and  
26 Class Counsel's costs shall not exceed \$22,500, as approved by the Court.

27 **4. PAGA Payment to the LWDA.**

28 The PAGA Payment to the LWDA shall be \$75,000.

1                                   **5.       The Net Settlement Amount.**

2                   The Net Settlement Amount shall be allocated and distributed among the Settlement Class  
3 Members in Individual Settlement Amounts. Individual Settlement Amounts will equal the sum of the  
4 Settlement Class Member’s FLSA Collective Settlement Amount, if any, and their California Class  
5 Pro-Rata Amount, if any.

6                                   **a.       FLSA Collective Settlement Amount.**

7                   Each Class Member who submits a valid Opt-In Consent Form shall receive \$500 in exchange  
8 for the release of their claims under the FLSA.

9                                   **b.       California Class Pro-Rata Amount.**

10                  After the FLSA Collective Settlement Amounts have been allocated, the Remaining Net  
11 Settlement Amount will be distributed pro-rata to members of the California Class based on the number  
12 of Weeks Worked determined by the contract and termination dates in Defendant’s records for each  
13 California Class Member. Specifically, the Settlement Administrator will calculate the Remaining Net  
14 Settlement Amount per Week Worked by dividing the Remaining Net Settlement Amount by the total  
15 number of Weeks Worked in the Class Period for all California Class Members. Then, the Settlement  
16 Administrator will calculate each California Class Member’s share of the Remaining Net Settlement  
17 Amount, by multiplying the Remaining Net Settlement Amount per Week Worked by the number of  
18 Weeks Worked by the California Class Member during the Class Period.

19                   **E.       Time for Payment from the Gross Settlement Amount.**

20                                   **1.       Payment of the PAGA Payment to the LWDA.**

21                  Within 21 days of the Effective Date, the Settlement Administrator will send a copy of the Final  
22 Order Approving Settlement and Judgment and the PAGA Payment to the LWDA to: Department of  
23 Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102.

24                                   **2.       Payment of the Enhancement Award.**

25                  The Settlement Administrator shall pay the Enhancement Award to Plaintiff, as approved by  
26 the Court, within 21 days of the Effective Date.

27                                   **3.       Payment of Attorney’s Fees and Costs.**

28                  The Settlement Administrator shall pay any attorney’s fees and costs approved by the Court to

1 Class Counsel by wire transfer within 21 days of the Effective Date. Class Counsel will provide the  
2 Settlement Administrator with the necessary IRS W-9 Form, tax ID numbers, and bank routing  
3 information for the payment.

4 **4. Payment of Administrative Expenses.**

5 The Settlement Administrator shall pay its expenses, up to \$15,000, within 21 days of the  
6 Effective Date. Payment of the Administrative Expenses shall not relieve the Settlement Administrator  
7 from continuing its services under this Stipulation.

8 **5. Payment of the Individual Settlement Amounts.**

9 The Settlement Administrator will make every effort to mail, by first-class U.S. mail, to the  
10 last-known address, the Individual Settlement Amount to each Settlement Class Member no later than  
11 21 days after the Effective Date. If the Settlement Administrator is not able to mail the Individual  
12 Settlement Amounts to Settlement Class Members within the time period set forth above, it shall so  
13 inform Class Counsel and Defense Counsel and provide an approximate date by which the Individual  
14 Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator  
15 distribute checks to Settlement Class Members until all disputes of Estimated Individual Settlement  
16 Amounts have been resolved, all Individual Settlement Amounts calculated, and accounted for, and the  
17 obligations set forth in Sections A through D have been calculated and approved by the Court. In the  
18 event any Settlement Class Member is deceased, payment shall be made payable to the estate of that  
19 Settlement Class Member and delivered to the executor or administrator of that estate, unless the  
20 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code  
21 § 13101, in which case payment shall be made to the affiant(s) or declarant(s).

22 Within 14 days following the Settlement Administrator's duties in Section (F) below, the  
23 Settlement Administrator shall provide a declaration of payment to Class Counsel, who will be  
24 responsible for filing it with the Court.

25 **F. Returned and Uncashed Individual Settlement Amount Checks.**

26 Each Settlement Class Member must cash his or her Individual Settlement Amount check within  
27 120 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the  
28 Settlement Administrator may make such efforts, if any, as it deems to be reasonable to re-mail it to



1 the Settlement Class Member at his or her correct address. If any Settlement Class Member's Individual  
2 Settlement Amount check is not cashed within 90 days after it is mailed or re-mailed, whichever is  
3 later, the Settlement Administrator will send the Settlement Class Member a reminder postcard  
4 informing him or her that, unless the check is cashed within 120 days after the date on the check, it will  
5 expire and become non-negotiable and offering to replace the check if it was lost or misplaced, but not  
6 cashed. If the check remains uncashed by the expiration of the 120-day period, the Settlement  
7 Administrator will pay over the Individual Settlement Amount represented by the check to the  
8 California State Controller – Unclaimed Property Division, with the identity of the Settlement Class  
9 Member to whom the funds belong. In such event, the Settlement Class Member will nevertheless  
10 remain bound by the Settlement.

11           Alternatively, if required by the Court, the parties agree that any uncashed Individual Settlement  
12 Amount checks will be donated to Bet Tzedek, in *cy pres*. In such event, the Settlement Class Member  
13 will nevertheless remain bound by the Settlement.

14 **X. NULLIFICATION OF THIS STIPULATION.**

15 **A. Non-Approval of the Stipulation.**

16           If (1) the Court should for any reason decline to approve this Stipulation in the form agreed to  
17 by the Parties, or (2) the Court should for any reason fail to enter a judgment and dismissal with  
18 prejudice of the Action, or (3) the judgment and dismissal is reversed, modified or declared or rendered  
19 void, then the Stipulation and Settlement shall be considered null and void, and the Stipulation,  
20 Settlement, or any of the related negotiations or proceedings, shall be of no force or effect, and all  
21 parties to the Stipulation shall stand in the same position, without prejudice, as if the Stipulation had  
22 been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may  
23 attempt in good faith to cure any perceived defects in the Stipulation to facilitate approval as provided  
24 in Section VII.C. above. However, if the Parties' attempts fail, then Plaintiff will dismiss without  
25 prejudice his claims under the FLSA and those under California law, except the PAGA claim; and the  
26 Parties will proceed with the PAGA claim in this Action. The Parties will be equally responsible for all  
27 charges incurred by the Settlement Administrator as of the date of entry of any order denying  
28 preliminary or final approval of this Stipulation.

1           **B. Plaintiff’s Right to Reject the Settlement.**

2                   **1. Period to Consider Terms of Agreement.**

3           Plaintiff acknowledges that he is entitled to and has been given 21 days to consider whether to  
4 accept the terms of the release given in Article V, Section B of this Stipulation. If Plaintiff executes  
5 this Stipulation before the expiration of the 21-day period, he does so voluntarily, upon the advice and  
6 with the approval of Class Counsel, and he expressly and voluntarily waives his right to consider the  
7 release in Article V, Section B for any remaining portion of that 21-day period.

8                   **2. Revocation of Agreement.**

9           Plaintiff understands that, after executing this Stipulation, he has the right to revoke it within  
10 7 days after execution. Plaintiff understands that this Agreement will not become effective and  
11 enforceable unless and until the 7-day revocation period has passed. Notice of the revocation of this  
12 Stipulation must be in writing and delivered to Defense Counsel, Christopher J. Eckhart, Scopelitis,  
13 Garvin, Light, Hanson & Feary, P.C., 10 West Market Street, Suite 1400, Indianapolis, Indiana, 46204,  
14 [ceckhart@scopelitis.com](mailto:ceckhart@scopelitis.com). The release provided for in Article V, Section B by Plaintiff shall become  
15 effective and enforceable as of the Effective Date, provided that the Effective Date occurs after the 7-  
16 day revocation period has passed.

17                   **3. Plaintiff’s Option to Blow-Up the Settlement.**

18           Plaintiff, at his option, can blow-up (reject) the Settlement if there is a 10% increase in the  
19 number of workweeks between the mediation date and the date the parties agree is the end of the Class  
20 Period. The reported workweeks at mediation were 5,085.

21           **C. Defendant’s Right to Blow-Up the Settlement.**

22           Defendant, at its option, can blow-up (reject) the Settlement if eight (8) or more members of the  
23 California Class opt out of the Settlement.

24 **XI. MISCELLANEOUS PROVISIONS.**

25           **A. Duties of the Parties.**

26                   **1. Mutual Full Cooperation.**

27           The Parties agree to cooperate fully with one another to accomplish and implement the terms  
28 of this Stipulation. Such cooperation shall include, but not be limited to, execution of such other

1 documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of  
2 this Stipulation. The Parties shall use their best efforts, including all efforts contemplated by this  
3 Stipulation and any other efforts that may become necessary by court order, or otherwise, to effectuate  
4 this Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation,  
5 Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and  
6 reasonable steps to secure the Court's final approval of this Stipulation.

7 **2. Duty to Support and Defend the Stipulation.**

8 The Parties hereto agree to abide by all terms of the Stipulation in good faith and to support the  
9 Stipulation fully and to use their best efforts to defend this Stipulation from any legal challenge, whether  
10 by appeal or collateral attack.

11 **3. Duties Prior to Court Approval.**

12 **a. Class Counsel.**

13 Class Counsel shall promptly submit this Stipulation to the Court for preliminary approval and  
14 determination by the Court as to its fairness, adequacy, and reasonableness, and apply to the Court to  
15 (a) issue an order preliminarily approving the Settlement as fair, adequate, and reasonable as to all Class  
16 Members; (b) approving as to form and content the proposed Class Notice attached hereto as **Exhibit**  
17 **1**; (c) approving as to form the Opt-In Consent Form, attached hereto as **Exhibit 2**, and procedure; and  
18 (d) directing the mailing of the Class Notice and Opt-In Consent Form to Class Members.

19 **b. Defense Counsel.**

20 Defense Counsel shall file a notice of non-opposition to the motion for preliminary approval or  
21 join in the motion.

22 **B. Different Facts.**

23 The Parties acknowledge that, except for matters expressly represented herein, the facts in  
24 relation to the dispute and all claims released by the terms of this Stipulation may turn out to be other  
25 than or different from the facts now known by each party and/or its counsel, or believed by such party  
26 or counsel to be true, and each party therefore expressly assumes the risk of the existence of different  
27 or presently unknown facts, and agrees that this Stipulation shall be in all respects effective and binding  
28 despite such difference.

1           **C.     No Prior Assignment.**

2           The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,  
3 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any  
4 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged  
5 except as set forth herein.

6           **D.     Non-Admission.**

7           Nothing in this Stipulation shall be construed to be or deemed an admission by Defendant of  
8 any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other  
9 person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing  
10 toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this  
11 Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience,  
12 expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of  
13 wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall  
14 constitute an admission by Defendant that the Action was properly brought as a class, collective or  
15 representative action other than for settlement purposes. To the contrary, Defendant has denied and  
16 continues to deny each and every material factual allegation and alleged claim asserted in the Action.  
17 To this end, the Settlement of the Action, the negotiation and execution of this Stipulation, and all acts  
18 performed or documents executed pursuant to or in furtherance of this Stipulation, shall not be deemed  
19 to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of  
20 Defendant or of the truth of any of the factual allegations in the Complaint in the Action; and are not,  
21 shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission  
22 on the part of Defendant in any civil, criminal or administrative proceeding in any court, administrative  
23 agency, or other tribunal.

24           **E.     Public Comments Regarding the Litigation or the Stipulation.**

25           Neither Plaintiff nor Plaintiff's counsel shall issue any press release related to the Settlement.  
26 Plaintiff and Plaintiff's counsel agree that, prior to preliminary approval of the Settlement, they will  
27 keep the terms of the Settlement confidential except for purposes of communicating with Plaintiff only.  
28 Plaintiff shall be informed that the Settlement is confidential and shall be advised to keep the Settlement

1 confidential. From and after preliminary approval of the Settlement, Plaintiff and Plaintiff's counsel  
2 may: (i) as required by law; (ii) as required under the terms of the Settlement; or (iii) as required under  
3 counsel's duties and responsibilities as Class Counsel, comment regarding the specific terms of the  
4 Settlement with Settlement Class Members. In all other cases, Plaintiff and Plaintiff's counsel agree to  
5 limit their statements regarding the terms of the Settlement, whether oral, written, or electronic  
6 (including the world wide web), to say the Action has been resolved and that Plaintiff and Plaintiff's  
7 counsel are satisfied with the Settlement terms. Nothing in this paragraph is intended to interfere with  
8 Plaintiff's counsel's duties and obligations to faithfully discharge their duties as Class Counsel,  
9 including but not limited to, communicating with Settlement Class Members regarding the Settlement  
10 Agreement.

11 **F. Non-Retaliation.**

12 Defendant understands and acknowledges that it has a legal obligation not to retaliate against  
13 any Class Member. Defendant will refer any inquiries regarding this Stipulation to the Settlement  
14 Administrator or Class Counsel and will not discourage Class Members, directly or indirectly, from  
15 participating in, opting out of, or objecting to the Stipulation.

16 **G. Construction.**

17 The Parties hereto agree that the terms and conditions of this Stipulation are the result of  
18 lengthy, intensive, arms-length negotiations between the Parties and that this Stipulation is not to be  
19 construed in favor of or against any party by reason of the extent to which any party or his or its counsel  
20 participated in the drafting of this Stipulation.

21 **H. Governing Law.**

22 This Stipulation is intended to and shall be governed by the laws of the State of California,  
23 without regard to conflict of law principles, in all respects, including execution, interpretation,  
24 performance, and enforcement.

25 **I. Notices.**

26 Except for the Class Notice sent to Class Members by the Settlement Administrator, any and  
27 all notices or other communications required or permitted under this Stipulation shall be in writing and  
28 shall be sufficiently given if delivered in person to the party or their counsel or if sent to the party

1 without counsel by United States certified mail, postage prepaid, e-mail, facsimile, or overnight  
2 delivery addressed to the address of the party appearing in this Stipulation.

3 **J. Captions and Interpretations.**

4 Article and section titles or captions contained herein are inserted as a matter of convenience  
5 and for reference only and in no way define, limit, extend, or describe the scope of this Stipulation or  
6 any provision thereof.

7 **K. Modification.**

8 This Stipulation may not be changed, altered, or modified, except in writing signed by the  
9 Parties and approved by the Court. This Stipulation may not be discharged except by performance in  
10 accordance with its terms or by a writing signed by the Parties.

11 **L. Integration Clause.**

12 This Stipulation contains the entire agreement between the Parties relating to the Settlement of  
13 the Action and the transactions contemplated thereby, and all prior or contemporaneous agreements,  
14 understandings, representations, and statements, whether oral or written, and whether by a party or such  
15 party's legal counsel, are hereby superseded. No rights under this Stipulation may be waived except in  
16 writing.

17 **M. Successors and Assigns.**

18 This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective  
19 present and former heirs, trustees, executors, administrators, representatives, officers, directors,  
20 shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants,  
21 pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related  
22 companies, joint ventures, predecessors, successors, and assigns.

23 **N. Class Counsel Signatories.**

24 Because the Class Members are so numerous, the Parties agree that it is impossible or  
25 impractical to have each Class Member sign this Stipulation. It is agreed that, for purposes of seeking  
26 approval of the Stipulation and Settlement, this Stipulation may be executed on behalf of the Class  
27 Members by Class Counsel and the Class and Collective Representative.

28 //

1           **O.     Corporate Signatories.**

2           Any person executing this Stipulation or any such related document on behalf of a corporate  
3 signatory hereby warrants and promises, for the benefit of all Parties hereto, that such person has been  
4 duly authorized by such corporation to execute this Stipulation or any such related document.

5           **P.     Execution in Counterparts.**

6           This Stipulation shall become effective upon its execution by all of the undersigned. The Parties  
7 may execute this Stipulation in counterparts, and execution of counterparts shall have the same force  
8 and effect as if all Parties had signed the same instrument.

9           **Q.     Attorney Fees, Costs, and Expenses.**

10          Except as otherwise specifically provided for herein, each party shall bear his or its own  
11 attorneys' fees, costs, and expenses, taxable or otherwise, incurred by them with respect to the Claims  
12 in the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

13          **R.     Action to Enforce Stipulation.**

14          In any suit or court action to enforce the terms of this Stipulation, the prevailing party shall be  
15 entitled to recover attorneys' fees, costs, and expenses.

16          **S.     Continuing Jurisdiction.**

17          The Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate  
18 to effectuate, consummate, and enforce the terms of this Agreement, to approve the award of attorneys'  
19 fees and costs pursuant hereto, and to supervise the administration and distribution of money from the  
20 Settlement fund pursuant to California Code of Civil Procedure Section 664.6.

21          [Signature Blocks on Next Page]

22  
23  
24  
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26  
27  
28

1 Dated: April \_\_\_, 2023

Approved as to form,

2  
3 SCOPELITIS, GARVIN, LIGHT, HANSON  
& FEARY, P.C.

4  
5 /s/

Christopher J. Eckhart

6 *Attorney for Defendant,*  
7 *Wilson Logistics, Inc.*

8  
9 Dated: April \_\_\_, 2023

Approved as to form

10  
11 LEBE LAW, APLC

12  
13 /s/

Jonathan M. Lebe  
Zachary T. Gershman

14 *Attorneys for Plaintiff,*  
15 *Brian Thomas Ruff, individually and on*  
16 *behalf of all others similarly situated and on behalf of*  
*all aggrieved employees*

17  
18 Dated: April \_\_\_, 2023

PLAINTIFF, INDIVIDUALLY AND ON BEHALF  
OF ALL OTHERS SIMILARLY SITUATED AND ON  
BEHALF OF ALL AGGRIEVED EMPLOYEES

19  
20  
21 Brian Thomas Ruff

22 DEFENDANT, WILSON LOGISTICS, INC.

23 Date: April \_\_\_, 2023

24 By: \_\_\_\_\_

25 Printed Name: \_\_\_\_\_

26 Title: \_\_\_\_\_