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DISTRIBUTION, INC.; NEW BERN TRANSPORT
16 CORPORATION; AND PEPSICO, INC.

17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 NATHANIEL HELTON, on behalf of
20 himself, all others similarly situated,
and on behalf of the general public,

21 Plaintiff,

22 v.

23 PEPSI-COLA SALES AND
24 DISTRIBUTION, INC.; NEW BERN
TRANSPORT CORPORATION;
25 PEPSICO, INC.; and DOES 1 through
100, inclusive,

26 Defendants.

Case No. 3:17-cv-01135-EMC

**STIPULATION AND SETTLEMENT
OF CLASS ACTION CLAIMS**

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23
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25
26
27
28

TABLE OF CONTENTS

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

	<u>Page</u>
I. Settlement Agreement	1
II. Definitions	3
III. Background and Procedural History	5
IV. Investigation in the Class Action.....	5
V. Benefits of Settlement to Class Members	5
VI. Defendants’ Reasons for Settlement	5
VII. Defendants’ Denials of Wrongdoing.....	6
VIII. Plaintiff’s Claims	6
IX. Stipulation.....	6
1. “Effective Date”	7
2. Class Certification	7
3. Amendment To Add Claims For Penalties Under Labor Code Section 2699 (“PAGA”).....	8
4. Releases	8
(a) Release As To All Class Members.....	8
(b) Release As to All Settlement Class Members.....	10
5. Settlement Fund.....	14
6. Allocation of Settlement Fund	14
7. Plan of Allocation for Payment to Class Members and Settlement Class Members	15
8. Fees Award, Costs Award, and Incentive Award	18
9. Responsibilities of Defendants.....	20
Defendants shall:	20
10. Operation of the Settlement Fund	21
11. No Injunctive Relief	22
12. Notice/Approval of Settlement and Settlement Implementation	22
(a) CAFA Notice.....	22

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) Preliminary Settlement Hearing 23

(c) Preliminary Approval Order..... 23

(d) Notice to Plaintiffs..... 23

 (1) Claims Administrator 23

 (2) Notice By First-Class Mail..... 24

(e) Procedure for Payment of Settlement Awards 26

(f) Procedure for Objecting to or Requesting Exclusion From
Class Action Settlement. 28

 (1) Procedure for Objecting 28

 (2) Procedure for Requesting Exclusion 29

(g) No Solicitation of Settlement Objections or Exclusions 30

(h) Option to Terminate Settlement 30

(i) Final Settlement Approval Hearing and Entry of Final
Judgment 30

(j) Administration Costs 31

(k) Nullification of Settlement Agreement 31

13. Privacy of Documents and Information 32

14. No Effect on Employee Benefits 32

15. Publicity 33

16. No Admission By the Released Parties 33

17. Exhibits and Headings 34

18. Interim Stay of Proceedings 34

19. Amendment or Modification 34

20. Entire Agreement..... 34

21. Authorization to Enter Into Settlement Agreement..... 35

22. Binding on Successors and Assigns 35

23. California Law Governs 35

24. Counterparts 35

25. This Settlement is Fair, Adequate and Reasonable 35

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

26. Jurisdiction of the District Court 35

27. Cooperation and Drafting 36

28. Invalidity of Any Provision 36

29. Named Plaintiff’s Waiver of Right to be Excluded and Object 36

1 **STIPULATION AND SETTLEMENT AGREEMENT**
2 **OF CLASS ACTION CLAIMS**

3 I. **Settlement Agreement.** This Stipulation and Settlement Agreement of Class
4 Action Claims (“Settlement,” “Stipulation,” or “Agreement”) is made between Nathaniel
5 Helton (“Named Plaintiff”) on behalf of himself and each of the other “Plaintiffs” as
6 defined herein, on the one hand, and the defendants, Pepsi-Cola Sales and Distribution,
7 Inc.; New Bern Transport Corporation; Pepsico, Inc. and DOES 1-100 (collectively
8 “Defendants” or “New Bern”) on the other hand, in the action pending in the United States
9 District Court for the Northern District of California, Case No. 3-17-cv-01135 (“Class
10 Action” or “Lawsuit”), and subject to the approval of the Court. This Settlement was
11 reached pursuant to multiple mediations, the last of which was conducted on May 21,
12 2018, by Michael Dickstein.

13 II. **Definitions.**

14 A. The term “Settlement” means the settlement described in this
15 Stipulation.

16 B. The term “Claims Administrator” means CPT Group, the firm that the
17 Parties mutually agreed shall be responsible for the administration of the Settlement,
18 distribution of any amounts owed under this settlement, and matters necessarily related
19 thereto, pursuant to the terms of this Stipulation. CPT Group is located at 50 Corporate
20 Park, Irvine, California 92606, Telephone: 1-800-542-0900; Fax: 949-428-1011; Website:
21 www.cptgroup.com.

22 C. The term “Court” as used herein means the United States District
23 Court for the Northern District of California.

24 D. The term “Plaintiffs’ Counsel” or “Class Counsel” means William
25 Turley, David Mara, and Jamie Serb of the Turley & Mara Law Firm, APLC.

26 E. The terms “Lawsuit” or “Action” mean the action entitled Nathaniel
27 Helton v. Pepsi-Cola Sales and Distribution, Inc.; New Bern Transport Corporation;
28

1 Pepsico, Inc. and DOES 1-100, Case No. 3-17-cv-01135, pending before Judge Edward
2 M. Chen of the United States District Court for the Northern District of California.

3 F. The term “Complaint” means the complaint filed by Named Plaintiff
4 in the Lawsuit on January 25, 2017.

5 G. The term “First Amended Complaint” or “FAC” means the First
6 Amended Complaint filed by Named Plaintiff in the Lawsuit on December 12, 2017.

7 H. The term “Operative Complaint” means the Second Amended
8 Complaint Named Plaintiff filed on June 6, 2018 (Doc. No. 34) as part of the settlement of
9 the Lawsuit to allege claims under the Private Attorney’s General Act (“PAGA”) so that
10 they may be released by and through this settlement.

11 I. The term “Class Period” means the time period beginning January 25,
12 2013 and ending on the date the Court issues an order granting preliminary approval of the
13 settlement.

14 J. The term “Named Plaintiff” means Nathaniel Helton.

15 K. The term “Plaintiffs” means drivers – including those employed under
16 the title of Bulk Drivers, Delivery Bay Drivers, Drivers, Delivery Drivers, Delivery Driver
17 Trainees, Relief Drivers, GEOBox Drivers, FSV Drivers, and Transport Drivers
18 (collectively referred to herein as “Drivers”) - employed by New Bern in the State of
19 California during the Class Period.

20 L. The term “Unlocated Plaintiffs” means any Plaintiffs whose Notice
21 has been returned as undeliverable after all of the procedures in paragraph IX.12(d) have
22 been followed. Unlocated Plaintiffs will remain Class Members and their share of the
23 State Law Fund shall be remitted to the State of California’s Unclaimed Wages Fund, as
24 described further below.

25 M. The term “Class Member” means a Plaintiff who has not requested
26 exclusion from the Settlement pursuant to the provisions set forth in this Agreement.

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1 N. The term “Settlement Class Member” means a Class Member who has
2 returned a valid and timely Claim Form/FLSA Consent Form (“Consent Form”) pursuant
3 to paragraph IX.12(e) of this Stipulation.

4 III. Background and Procedural History.

5 A. On January 25, 2017, Plaintiff Nathaniel Helton, a formerly employed
6 driver for New Bern, filed his class action complaint against Defendants in the Superior
7 Court of California for the County of Alameda, Case No. RG 17847014. The Complaint
8 alleged causes of action against Defendants on behalf of all Drivers who were employed
9 by Defendants in the state of California going back to January 25, 2013, for the failure to
10 pay all straight time wages, failure to pay all overtime wages, failure to provide meal and
11 rest periods, knowing and intentional failure to properly itemize wage statements, failure to
12 pay all wages due at the time of termination, and for violations of California’s Unfair
13 Competition Law.

14
15 B. Defendants answered the complaint on March 3, 2017, and removed
16 the matter to the United States District Court for the Northern District of California on
17 March 6, 2017.

18
19 C. Plaintiff propounded written discovery and the Parties agreed to
20 attend mediation with Michael Dickstein, which occurred on October 26, 2017. Prior to the
21 mediation, Defendants produced documents and data that helped Plaintiff and his counsel
22 evaluate the potential and scope of class-wide settlement. A settlement was not reached at
23 that mediation. The Parties did, however, agree to attend a second mediation with Michael
24 Dickstein, which was scheduled to, and did, occur on March 12, 2018.

25
26 D. On November 28, 2017, the Court held a Case Management
27 Conference. At this Case Management Conference, the Parties informed the Court of the
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1 first mediation and the intent to set up a second mediation after further meeting and
2 conferring and exchange of additional data. The Court ordered a schedule for the matter to
3 proceed to class certification that would accommodate the time needed for pre-certification
4 discovery needs as well as the Parties' intent to further explore settlement. As part of this
5 schedule, the Court scheduled the class certification hearing to occur on September 13,
6 2018.

7
8 E. On December 12, 2017, Plaintiff filed his First Amended Complaint,
9 which removed the claim for failure to pay overtime under California law and inserted in
10 its place a claim for overtime under the Federal Fair Labor Standards Act ("FLSA"). The
11 FAC also added an additional claim for failure to reimburse expenses under California
12 Labor Code section 2802.

13
14 F. The Parties agreed that, prior to the March 12, 2018, mediation, they
15 would continue to meet and confer and exchange information and data in an attempt to
16 further distill the nature of the claims and defenses. As part of this process, Plaintiff
17 noticed and took the deposition of Defendants' 30(b)(6) witness to testify on various topic
18 areas affecting certification and merits-based issues of Plaintiff's claims. The case did not
19 settle at the March 12, 2018, mediation, as it was determined that further data and
20 refinement of issues was still needed.

21
22 G. A third mediation was scheduled to, and did occur, on May 21, 2018,
23 with Michael Dickstein. At this third mediation, the Parties again negotiated in good-faith,
24 yet at arms-length. The Parties did not reach an agreement to settle at this mediation;
25 however, on Friday, May 25, 2018, the mediator, Michael Dickstein, issued a proposal,
26 which the Parties mutually accepted on May 30, 2018.

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1 IV. Investigation in the Class Action. The Parties conducted a significant
2 investigation of the facts and law during the prosecution of this Action. Such
3 investigations have included, *inter alia*, the exchange of information and documents
4 through informal and formal discovery. For instance, prior to agreeing to settlement,
5 Plaintiff reviewed class-wide documents relating to policies, practices, wage statements,
6 time records, trip sheets, and records purporting to evidence class members' receipt of
7 meal and rest periods.

8 Given the disagreement between the Parties as to the viability of the claims
9 in the lawsuit, the Parties believe the Settlement provided for herein is a fair, adequate and
10 reasonable settlement.

11 V. Benefits of Settlement to Class Members. Named Plaintiff recognizes the
12 expense and length of continued proceedings necessary to continue the litigation against
13 Defendants through trial and through any possible appeals. Named Plaintiff has also taken
14 into account the uncertainty and risk of the outcome of further litigation, and the
15 difficulties and delays inherent in such litigation. Named Plaintiff is also aware of the
16 burdens of proof necessary to establish liability for the claims asserted in the Action (the
17 "Claims" or "Class Action Claims"), Defendants' defenses thereto, and the difficulties in
18 establishing damages for Plaintiffs. Named Plaintiff has also taken into account the
19 extensive discovery undertaken and settlement negotiations conducted, which negotiations
20 resulted in the material settlement terms entered into on May 30, 2018. Based on the
21 foregoing, Named Plaintiff has determined that the Settlement set forth in this Agreement
22 is a fair, adequate and reasonable settlement, and is in the best interests of Plaintiffs.

23 VI. Defendants' Reasons for Settlement. Defendants have concluded that any
24 further defense of this litigation would be protracted and expensive for all Parties.
25 Substantial amounts of time, energy and resources of Defendants have been and, unless
26 this Settlement is made, will continue to be devoted to the defense of the claims asserted
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1 by Plaintiffs. For these reasons, Defendants have agreed to settle in the manner and upon
2 the terms set forth in this Agreement to put to rest the Claims as set forth in the Action.

3 VII. Defendants' Denials of Wrongdoing. Defendants have denied and continue
4 to deny each of the claims and contentions alleged by Plaintiff in the Action. Defendants
5 have repeatedly asserted and continue to assert defenses thereto, and have expressly denied
6 and continue to deny any wrongdoing or legal liability arising out of any of the facts or
7 conduct alleged in the Action. Defendants also have denied and continue to deny, *inter*
8 *alia*, the allegations that Plaintiff or the putative class were not provided with meal and/or
9 rest periods; were not paid for all hours worked, including overtime; were not reimbursed
10 for all business expenses; were not provided with accurate, itemized wage statements; or
11 were not paid in full upon termination. Neither this Agreement, nor any document referred
12 to or contemplated herein, nor any action taken to carry out this Agreement, is, may be
13 construed as, or may be used as an admission, concession or indication by or against
14 Defendants of any fault, wrongdoing or liability whatsoever.

15 VIII. Plaintiff's Claims. Plaintiff claims and continues to claim that the Released
16 Claims and Released Federal Claims (as defined below) have merit and give rise to
17 liability on the part of Defendants. Plaintiff, however, understands that the trier of fact may
18 find differently and may find that some or all of Plaintiff's causes of action fail. Neither
19 this Agreement nor any documents referred to herein, or any action taken to carry out this
20 Agreement is or may be construed as or may be used as an admission by or against
21 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted.

22 IX. Stipulation. NOW, THEREFORE, IT IS HEREBY STIPULATED, by and
23 among Named Plaintiff on behalf of Plaintiffs on the one hand, and Defendants on the
24 other hand, and subject to the approval of the Court, that the Action is hereby being
25 compromised and settled pursuant to the terms and conditions set forth in this Agreement
26 and that upon the Effective Date (as defined below) the Action shall be dismissed with
27 prejudice and shall be a binding and final resolution of any and all claims by Class
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1 Members, subject to the recitals set forth hereinabove which by this reference become an
2 integral part of this Agreement and subject to the following terms and conditions:

3 1. “Effective Date”. As used in this Settlement, “Effective Date” means
4 the date by which the Settlement Agreement is finally approved as provided herein and the
5 Court’s Final Judgment becomes final. For purposes of this paragraph, the Final Judgment
6 “becomes final” when: (i) the period for filing any appeal, writ, or other appellate
7 proceeding opposing the Settlement has elapsed without any appeal, writ, or other
8 appellate proceeding having been filed; (ii) any appeal, writ or other appellate proceeding
9 opposing the Settlement has been dismissed finally and conclusively with no right to
10 pursue further remedies or relief; or (iii) or any appeal, writ or other appellate proceeding
11 has upheld the Court’s final order with no right to pursue further remedies or relief. In this
12 regard, it is the intention of the Parties that the Settlement shall not become effective until
13 the Court’s order approving the Settlement is completely final, and there is no further
14 recourse by an appellant or objector who seeks to contest the Settlement.

15 2. Class Certification. For the purposes of this Stipulation only, the
16 Parties agree to the certification of the Settlement Class, to include all Drivers – which is
17 inclusive of Bulk Drivers, Delivery Bay Drivers, Drivers, Delivery Drivers, Delivery
18 Driver Trainees, Relief Drivers, GEOBox Drivers, FSV Drivers, and Transport Drivers -
19 employed by New Bern in California at any point between January 25, 2013, and the date
20 the Court issues an order preliminarily approving the settlement.

21 Should for whatever reason the Stipulation not become final, the fact that the
22 Parties were willing to stipulate to class certification as part of the Settlement shall have no
23 bearing on, and shall not be admissible in connection with, the issue of whether a class
24 should be certified in a non-settlement context in the Lawsuit, and shall have no bearing
25 on, and shall not be admissible in connection with, the issue of whether a class should be
26 certified in any other lawsuit.

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1 3. Amendment To Add Claims For Penalties Under Labor Code Section
2 2699 (“PAGA”).

3 Named Plaintiff has filed a Second Amended Complaint to add claims for
4 penalties under the California Private Attorney’s General Act (“PAGA”) so that those
5 claims may be settled and released by and through this Stipulation. Plaintiff has already
6 exhausted his administrative notice requirements, as he provided notice to the Labor and
7 Workplace Development Agency (“LWDA”) of his intentions to pursue PAGA claims on
8 March 2, 2018, and has waited the statutory minimum time period before filing an
9 amended complaint that adds PAGA claims. This Second Amended Complaint shall serve
10 as the Operative Complaint for purposes of this Settlement.

11 4. Releases.

12 (a) Release As To All Class Members . The Class Members,
13 including Named Plaintiff, shall, as of the Effective Date, fully and finally release and
14 discharge Defendants, and their former and present parents, subsidiaries and affiliated
15 corporations and their officers, directors, employees, partners, shareholders and agents,
16 and any other successors, assigns, or legal representatives (“Released Parties”) from the
17 “Released State Law Claims.” For purposes of this Agreement, the “Released State Law
18 Claims” are defined as:

19 (1) any and all claims, demands, rights, liabilities, and
20 causes of action of every nature and description whatsoever, known or unknown, asserted
21 or that might have been asserted,

22 (2) whether in tort, contract, or for violation of any state
23 constitution, statute, rule or regulation, including state wage and hour laws,

24 (3) whether for economic damages, non-economic
25 damages, restitution, penalties or liquidated damages, arising out of, relating to, or in
26 connection with:

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1 (i) all state law causes of action alleged or that could
2 have been alleged based upon the facts pleaded in the Operative Complaint under any
3 theory of law, including but not limited to claims for: failure to pay all wages, including
4 straight time and overtime wages; failure to provide meal and rest periods; knowing and
5 intentional failure to comply with itemized employee wage statement provisions; failure to
6 pay all wages timely, including wages due at the time of termination; failure to
7 reimburse/illegal deductions; violations of California’s Unfair Competition Law; and
8 violations of PAGA; and/or

9 (ii) any and all facts, transactions, events, policies,
10 occurrences, acts, disclosures, statements, omissions or failures to act, alleged in or that
11 could have been alleged in the Operative Complaint based upon the facts pleaded in the
12 Operative Complaint under any theory of law, which are or could be the basis of claims
13 related to Defendants’ alleged failure to failure to pay all wages, including straight time
14 and overtime wages; failure to provide meal and rest periods; knowing and intentional
15 failure to comply with itemized employee wage statement provisions; failure to pay all
16 wages timely, including wages due at the time of termination; failure to reimburse/illegal
17 deductions; violations of California’s Unfair Competition Law; and violations of PAGA;
18 or other damages of any kind based on a failure to comply with any state wage and hour
19 laws, at any time during the Class Period (whether based on California state wage and hour
20 law, contract, or otherwise).

21 With respect to the Released State Law Claims, it is stipulated and agreed
22 that, upon the Effective Date, the Class Members shall be deemed to have, and by
23 operation of the Final Judgment shall have, expressly waived and relinquished, to the
24 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
25 California Civil Code, or any other similar provision under federal or state law, which
26 Section provides:

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1 A general release does not extend to claims which the creditor
2 does not know or suspect to exist in his or her favor at the time
3 of executing the release, which if known by him or her must
4 have materially affected his or her settlement with the debtor.

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

15 The Class Members agree not to sue or otherwise make a claim against any
16 of the Released Parties that is related to the Released State Law Claims.

17 (b) Release As to All Settlement Class Members. In addition to
18 releasing the Released Parties from the Released State Law Claims as outlined in
19 subsection (a), Settlement Class Members, including Named Plaintiff, also release the
20 Released Parties from the “Released Federal Law Claims.” For purposes of this
21 Agreement, the “Released Federal Law Claims” are defined as:

22 (1) any and all applicable federal law claims, demands,
23 rights, liabilities, and causes of action of every nature and description whatsoever, known
24 or unknown, asserted or that might have been asserted,

25 (2) whether in tort, contract, or for violation of any federal
26 constitution, statute, rule or regulation, including federal wage and hour laws, whether for
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1 economic damages, non-economic damages, restitution, penalties or liquidated damages,
2 arising out of, relating to, or in connection with:

3 (i) all federal law causes of action alleged in or that
4 could have been alleged in the Operative Complaint based upon the facts pleaded in the
5 Operative Complaint under any theory of law, including but not limited to: failure to pay
6 wages, including straight time and overtime wages under the FLSA; failure to provide rest
7 periods; failure to timely pay wages owed; and/or

8 (ii) any and all facts, transactions, events, policies,
9 occurrences, acts, disclosures, statements, omissions or failures to act, alleged in or that
10 could have been alleged in the Operative Complaint, based upon the facts pleaded in the
11 Operative Complaint under any theory of law, which are or could be the basis of claims
12 related to Defendants' alleged failure to failure to pay wages, including straight time and
13 overtime under the FLSA; failure to provide rest periods; failure to timely pay wages
14 owed; or other damages of any kind based on a failure to comply with any federal wage
15 and hour laws, at any time during the Class Period (whether based on federal wage and
16 hour law, contract, or otherwise).

17 With respect to the Released Federal Law Claims, the Settlement Class
18 Members stipulate and agree that, upon the Effective Date, the Settlement Class Members
19 shall be deemed to have, and by operation of the Final Judgment shall have, expressly
20 waived and relinquished, to the fullest extent permitted by law, the provisions, rights and
21 benefits of Section 1542 of the California Civil Code, or any other similar provision under
22 federal or state law, which Section provides:

23 A general release does not extend to claims which the creditor
24 does not know or suspect to exist in his or her favor at the time
25 of executing the release, which if known by him or her must
26 have materially affected his or her settlement with the debtor.

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1 The Settlement Class Members may hereafter discover facts in addition to or
2 different from those they now know or believe to be true with respect to the subject matter
3 of the Released Federal Law Claims, but upon the Effective Date, shall be deemed to have,
4 and by operation of the Final Judgment shall have, fully, finally, and forever settled and
5 released any and all of the Released Federal Law Claims, whether known or unknown,
6 suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore
7 have existed, upon any theory of law or equity now existing or coming into existence in
8 the future, including, but not limited to, conduct that is negligent, intentional, with or
9 without malice, or a breach of any duty, law or rule, without regard to the subsequent
10 discovery or existence of such different or additional facts.

11 The Settlement Class Members agree not to sue or otherwise make a claim
12 against any of the Released Parties that is related to the Released Federal Law Claims.

13 (c) General Release By Named Plaintiff Only. In addition to the
14 releases made by the Settlement Class Members set forth in paragraph IX.4 hereof, Named
15 Plaintiff, as of the Effective Date, makes the additional following general release of all
16 claims, known or unknown. (The release set forth in this paragraph IX.4(c) shall be referred
17 to hereinafter as the “General Release”).

18 Named Plaintiff fully releases and discharges the Released Parties from all
19 claims, demands, rights, liabilities and causes of action of every nature and description
20 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort,
21 contract, or for violation of any state or federal statute, rule or regulation arising out of,
22 relating to, or in connection with any act or omission by or on the part of any of the
23 Released Parties committed or omitted prior to the execution hereof. This includes any
24 unknown claims Named Plaintiff does not know or suspect to exist in his favor, which, if
25 known by him, might have affected his settlement with, and release of, the Released
26 Parties or might have affected his decision not to object to the settlement. Named Plaintiff
27 understands that this General Release shall not serve to release claims that may not, as a
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1 matter of law, be released. Nothing in this Agreement shall prevent Named Plaintiff from
2 filing a charge with, cooperating with, reporting any suspected whistleblower claim(s) to,
3 or participating in any proceeding before the Equal Employment Opportunity Commission,
4 Securities and Exchange Commission, or other governmental authorities, and participating
5 in any benefits involved in such reporting. However, Named Plaintiff understands and
6 agrees that he is releasing Defendants from any and all claims by which he is giving up the
7 opportunity to recover any compensation, damages, or any other form of relief in any
8 proceeding brought by him or on his behalf.

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

14 A general release does not extend to claims which the creditor
15 does not know or suspect to exist in his or her favor at the time
16 of executing the release, which if known by him or her must
17 have materially affected his or her settlement with the debtor.

18 Named Plaintiff may hereafter discover facts in addition to or different from
19 those he now knows or believes to be true with respect to the subject matter of the General
20 Release, but Named Plaintiff, upon the Effective Date, shall be deemed to have, and by
21 operation of the Final Judgment shall have, fully, finally, and forever settled and released
22 any and all of the claims released pursuant to the General Release, whether known or
23 unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or
24 heretofore have existed upon any theory of law or equity now existing or coming into
25 existence in the future, including, but not limited to, conduct that is negligent, intentional,
26 with or without malice, or a breach of any duty, law or rule, without regard to the
27 subsequent discovery or existence of such different or additional facts.

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1 5. Settlement Fund. The term “Settlement Fund” shall refer to the funds
2 Defendants will distribute under the terms of this Settlement in accordance with paragraph
3 IX.6 below. The Settlement Fund has a maximum value of \$5,000,000.00, inclusive of
4 attorneys’ fees, costs and expenses; the service payments to the Named Plaintiff; payment
5 to the Labor Workforce Development Agency (“LWDA”); employer-owed taxes; and all
6 costs of administration, including settlement administration fees. Under no circumstances
7 will Defendants be liable for an amount that exceeds the total Settlement Fund.

8 6. Allocation of Settlement Fund. The Settlement Fund shall be
9 allocated among these elements:

10 (a) the “Fees Award” to Class Counsel, in an amount not to exceed
11 One Million Two Hundred Fifty Thousand Dollars and No Cents (\$1,250,000.00),
12 representative of 25% of the Settlement Fund;

13 (b) the “Costs Award” to Class Counsel, in an amount not to
14 exceed Sixty-Five Thousand Dollars and No Cents (\$65,000.00);

15 (c) “Service Award/General Release Payment ” to the Named
16 Plaintiff, in an amount not to exceed Seven Thousand Five Hundred Dollars and No Cents
17 (\$7,500.00);

18 (d) the “PAGA Payment,” in an amount not to exceed One
19 Hundred Thousand Dollars and No Cents (\$100,000.00) representative of penalties
20 recoverable under PAGA and payable to the LWDA, 75% of which, or \$75,000.00 will be
21 paid to the LWDA, and 25% of which, or \$25,000.00, will be paid to Class Members as an
22 additional component of their Settlement Awards, and will be part of the Payout Fund; and

23 (e) the “Claims Administration Expenses,” in an amount not to
24 exceed Twenty-Five Thousand Dollars and No Cents (\$25,000.00).

25 The amount that remains after the payment of the Fees Award, Costs Award,
26 Service Award/General Release Payment, Claims Administration Expenses, and LWDA
27 portion of the PAGA Payment have been deducted from the Settlement Fund shall be
28

1 called the "Payout Fund," which will be allocated as Settlement Awards (as defined below)
2 and distributed to Class Members and Settlement Class Members as described below.

3 The maximum total amount that Defendants can be required to pay for any
4 and all purposes under this Agreement, is the Settlement Fund, or \$5,000,000.00. All
5 payments set forth in this paragraph IX.6 shall be paid by Defendants through the Claims
6 Administrator within fourteen (14) days of the Effective Date.

7 7. Plan of Allocation for Payment to Class Members and Settlement
8 Class Members. Within fourteen (14) days after the Effective Date, and solely for
9 purposes of this Settlement, Defendants shall wire the amount of the Settlement Fund into
10 an account set up by the Claims Administrator for distribution in accordance with the
11 following eligibility and settlement formula requirements:

12 (a) Excluded from becoming Class Members are those Plaintiffs
13 who submit valid and timely requests for exclusion pursuant to the terms and procedures of
14 the Notice of Pendency and Settlement of Class Action; Settlement Hearing; and Claim,
15 Consent and Exclusion Procedures (attached as Exhibit 1 hereto).

16 (b) All Class Members will automatically receive a "State Law
17 Award" (as defined below). Any Class Member who submits a timely and properly
18 completed Claim Form/FLSA Consent Form ("Claim Form") (attached as Exhibit 2
19 hereto) will be deemed to have consented to opt into the FLSA Collective Action, will
20 become a "Settlement Class Member," and will also receive a Federal Law Award.
21 Defendants will pay Settlement Awards to Class Members and Settlement Class Members.
22 The Gross Settlement Amounts of these two categories of Settlement Awards will be
23 calculated as follows:

24 (i) After deducting the amount of Fees Award, the Costs
25 Award, the Service Award/General Release Payment, the LWDA portion of the PAGA
26 Payment, and Claims Administration Expenses that are all finally approved by the Court,
27
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1 the remaining Payout Fund will be allocated to Class Members and Settlement Class
2 Members;

3 (ii) Eighty percent (80%) of the Payout Fund (“State Law
4 Fund”) will be allocated to payment of State Law Awards to Class Members. All Class
5 Members will automatically receive a State Law Award on a pro-rata basis. To arrive at
6 these amounts, the State Law Fund will be distributed based on the number of weeks each
7 Class Member worked as a Driver during the Class Period. The number of workweeks for
8 each Class Member will be determined by adding all the calendar days within the inclusive
9 dates of employment and dividing that number by seven. Any partial workweek will be
10 rounded up to the nearest full workweek. This shall be considered each Class Member’s
11 “Workweek Figure.” Class Members’ State Law Awards will be calculated by dividing
12 the State Law Payout Fund by the total of all Class Members’ Workweek Figures to arrive
13 at a Per-Workweek Amount. For example, a Class Member who worked 365 days would
14 have a Workweek Figure of 52 weeks. If the State Law Fund was \$2,862,000.00, and the
15 Total Workweeks for all Class Members was 180,000, this would result in a \$15.90 Per-
16 Workweek Amount. Then, the above Class Member would be eligible for \$15.90 for 52
17 workweeks, or \$826.80. This would be the Class Member’s Gross State Law Settlement
18 Amount. All Class Members will automatically receive the Gross State Law Settlement
19 Amount of his or her Workweek Figure multiplied by the calculated Per-Workweek
20 Amount.

21
22 (iii) Twenty percent (20%) of the Payout Fund (“Federal
23 Law Fund”) will be allocated to payment of the Federal Law Awards. All Class Members
24 who submit a timely and valid Consent Form shall be deemed to have opted into the FLSA
25 Collective Action, will be deemed a Settlement Class Member, and shall receive a Federal
26 Law Award on a pro-rata basis. To arrive at these amounts, the Payout Fund will be
27 distributed based on the number of weeks each Class Member worked as a Driver during
28

1 the Class Period. The number of workweeks for each Class Member will be determined by
2 adding all the calendar days within the inclusive dates of employment and dividing that
3 number by seven. Any partial workweek will be rounded up to the nearest full workweek.
4 This shall be considered each Class Member's "Workweek Figure." Settlement Class
5 Members' Federal Law Awards will be calculated by dividing the Federal Law Fund by
6 the total of all Class Members' Workweek Figures to arrive at a Per-Workweek Amount.
7 For example, a Settlement Class Member who worked 365 days would have a Workweek
8 Figure of 52 weeks. If the Federal Law Fund was \$715,500.00, and the Total Workweeks
9 for all Class Members was 180,000, this would result in a \$3.98 Per-Workweek Amount.
10 Then, the above Settlement Class Member would be eligible for \$3.98 for 52 workweeks,
11 or \$206.70. This would be the Settlement Class Member's Gross Federal Law Settlement
12 Amount. All Settlement Class Members will be eligible to receive the Gross Federal Law
13 Settlement Amount of his or her Workweek Figure multiplied by the calculated Per-
14 Workweek Amount.

15
16 (iv) Any portion of the Federal Law Fund that is unclaimed
17 by Settlement Class Members shall be distributed pursuant to the provisions of California
18 Code of Civil Procedure section 384, as further described herein.

19
20 (v) Defendants shall provide each Plaintiff's workweek
21 information to the Settlement Administrator no later than thirty (30) days after the close of
22 the Class Period so that the Settlement Administrator may estimate individual Class
23 Member State and Federal Law Award payments.

24
25 (vi) The Gross Settlement Amounts will be reduced by any
26 legally-required employee and/or employer-owed state and federal withholding taxes or
27 other applicable payroll deductions for each Class Member and Settlement Class Member.

28

1 (vii) Fifty percent (50%) of all Individual Settlement
2 Payments to Class Members and Settlement Class Members will be called the "Gross
3 Wage Portion." The remaining fifty percent (50%) of payments to Class Members or
4 Settlement Class Members represents the "Non-Wage Portion" of the Individual
5 Settlement Payment and includes interest and penalties sought in the Class Action. Class
6 Members or Settlement Class Members will be issued W2s for the Wage Portions of their
7 Individual Settlement Payment and IRS Form 1099s for the Non-Wage Portions. From
8 each Class Member or Settlement Class Member's Gross Wage Portion, deductions will be
9 made for state and federal taxes owed by Defendants as a result of the payment and for any
10 applicable payroll deductions required to be made by Defendants as a result of the
11 payment. The resulting amount will be each individual Class Member or Settlement Class
12 Member's "Gross Wage Component." From each Class Member or Settlement Class
13 Member's Gross Wage Component, payroll deductions will be made for state and federal
14 withholding taxes and any other applicable payroll deductions owed by the Class Member
15 or the Settlement Class Member as a result of the payment, resulting in a "Net Wage
16 Component." The total of the Net Wage Component and the Non-Wage Portion shall be
17 the Class Member or Settlement Class Member's "Net Settlement Amount." The Net
18 Settlement Amount will be the net amount paid to each Class Member or Settlement Class
19 Member and is the Class Member or Settlement Class Member's "Settlement Award."

20
21 (viii) The Claims Administrator shall be responsible for
22 issuing the payments and calculating and withholding all required state and federal taxes
23 owed by the Class Members, Settlement Class Members and Defendants.

24
25 8. Fees Award, Costs Award, and Incentive Award. Class Counsel will
26 request, and Defendants will not oppose, an award of attorneys' fees ("Fees Award") of up
27 to One Million Two Hundred Fifty Thousand Dollars and No Cents (\$1,250,000.00). This
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1 constitutes twenty-five percent (25%) of the value of the Settlement Fund. Class Counsel
2 shall request, and Defendants will not oppose, an award of costs incurred up to Sixty-Five
3 Thousand Dollars and No Cents (\$65,000.00) (“Costs Award”). Class Counsels’ Fees
4 Award and Costs Award shall be included in the Settlement Fund. Any Fees Award and
5 Costs Award shall be paid by the Claims Administrator to Class Counsel within fourteen
6 (14) days of the Effective Date by wiring the Fees Award and Costs Award to an account
7 designated by Class Counsel. Class Counsel will be issued an IRS Form 1099 for their
8 award of attorneys’ fees and costs. If the Court awards attorneys’ fees and costs less than
9 said amount, the unawarded amounts shall be distributed *cy pres* pursuant to California
10 Code of Civil Procedure section 384, as described further herein. Class Counsel shall not
11 be permitted to petition the Court for, or accept, any additional payments for fees, costs, or
12 interest, and the Fees and Costs Awards shall be for all claims for attorneys’ fees and costs
13 past, present and future incurred in the Class Action.

14 Defendants’ payment of the Fees Award and Costs Award to Class Counsel
15 shall constitute full satisfaction of the obligation to pay any amounts to any person,
16 attorney or law firm for attorneys’ fees, expenses or costs in the Class Action incurred by
17 any attorney on behalf of Named Plaintiff and/or the Plaintiff Class, and shall relieve
18 Defendants, the Claims Administrator, the Settlement Fund, and Defendants’ Counsel of
19 any other claims or liability to any other attorney or law firm for any attorneys’ fees,
20 expenses and/or costs to which any of them may claim to be entitled on behalf of Named
21 Plaintiff and the Plaintiff Class.

22 Class Counsel may apply for Service Award/General Release Payment for
23 the Named Plaintiff in an amount not to exceed a total of Seven Thousand Five Hundred
24 Dollars and No Cents (\$7,500.00) (“Service Award/General Release Payment”).
25 Defendants agree not to oppose such an application, so long as it is consistent with the
26 provisions of this Agreement. Any Service Award/General Release Payment shall be paid
27 by the Claims Administrator to Class Counsel within fourteen (14) days of the Effective
28

1 Date either by check or wiring the Service Award/General Release Payment to an account
2 designated by Class Counsel. Named Plaintiff will be issued an IRS Form 1099s for the
3 Service Award/General Release Payment. If the Court awards a Service Award/General
4 Release Payment less than said amount, the unawarded amount shall be distributed *cy pres*
5 pursuant to California Code of Civil Procedure section 384, as described further herein.

6 Class Counsel agree to file their motion for the Class Counsel Attorneys'
7 Fees and Costs Payments at least seven (7) days prior to the deadline to file a written
8 objection to the Settlement.

9 9. Responsibilities of Defendants.

10 Defendants shall:

11 (a) Pay, or cause to be paid, the Claims Administrator for costs and
12 expenses of administering this Settlement, up to a maximum of Twenty-Five Thousand
13 Dollars and No Cents (\$25,000.00) , after the completion of the claims administration
14 process or on a different schedule agreed upon by Defendants and the Claims
15 Administrator. If the Court awards claims administration expenses less than said amount,
16 the unawarded amounts shall be distributed *cy pres* pursuant to California Code of Civil
17 Procedure section 384, as described further herein;

18 (b) Pay, or cause the Claims Administrator to pay, the Fees Award,
19 Costs Award, Service Award/General Release Payment, and the PAGA Payment, within
20 fourteen (14) days of the Effective Date;

21 (c) Provide, within thirty (30) days of the Court granting
22 Preliminary Approval of the Settlement, the Claims Administrator a "Class List and Data
23 Report" showing each Plaintiff's name, most current mailing address and telephone
24 number, social security number, and the respective number of weeks each Plaintiff worked
25 as a Driver during Class Period. Defendants shall provide the list in an electronic format
26 reasonably acceptable to the Claims Administrator. The Claims Administrator will keep
27 the list confidential, and will use it only for the purposes described herein;

28

1 (d) Cause the Claims Administrator to pay the Settlement Awards to
2 the Class Members and Settlement Class Members in accordance with the terms of this
3 Agreement.

4 (e) Cause the Claims Administrator to make all *cy pres* payments
5 pursuant to the provisions of California Code of Civil Procedure section 384. In
6 accordance with that provision, all *cy pres* payments contemplated by this settlement shall
7 be allocated as follows: twenty-five percent (25%) to the State Treasury for deposit in the
8 Trial Court Improvement and Modernization Fund; twenty-five percent (25%) to the State
9 Treasury for deposit into the Equal Access Fund of the Judicial Branch; and fifty percent
10 (50%) to The United Way, a non-profit organization that supports projects that benefit
11 employees and applicants throughout the State of California, including, for example, the
12 Bay Area Matchbridge Program, that provides training, support, and guidance for job-
13 seekers entering the workforce in the Bay Area.

14 10. Operation of the Settlement Fund.

15 (a) At no time shall Defendants have the obligation to segregate the
16 funds comprising the Settlement Fund from their other assets and will retain exclusive
17 authority over, and responsibility for, those funds.

18 (b) The Claims Administrator will calculate the Net Settlement
19 Amounts to be paid to the Class Members or Settlement Class Members from the Payout
20 Fund in accordance with the terms and provisions of this Agreement.

21 (c) The Claims Administrator shall have the authority and obligation
22 to make payments, credits and disbursements, including payments and credits in the
23 manner set forth herein, to Class Members and Settlement Class Members from the Payout
24 Fund calculated in accordance with the methodology set out in this Agreement and orders
25 of the Court, and shall do so.

26 (d) To the extent any tax returns must be filed for the Settlement
27 Fund pursuant to this Agreement, the Claims Administrator shall cause to be timely and
28

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

12 (e) No person shall have any claim against Defendants, Defendants’
13 Counsel, Named Plaintiff, Plaintiffs, the Class, Class Counsel or the Claims Administrator
14 based on distributions and payments made in accordance with this Agreement.

15 (f) The maximum amount Defendants can be required to pay under
16 this Settlement for any purpose, is the amount of the Settlement Fund.

17 11. No Injunctive Relief. As part of this Settlement, Defendants shall not
18 be required to enter into any consent decree, nor shall Defendants be required to agree to
19 any provision for injunctive relief, or to modify or eliminate any of its personnel,
20 compensation or payroll practices, or adopt any new personnel, compensation or payroll
21 practices.

22 12. Notice/Approval of Settlement and Settlement Implementation. As
23 part of this Settlement, the Parties agree to the following procedures for obtaining
24 preliminary Court approval of the Settlement, notifying Plaintiffs, obtaining final Court
25 approval of the Settlement, and processing the settlement payments:

26 (a) CAFA Notice. Pursuant to CAFA, within ten (10) business
27 days after Court issues an order granting Preliminary Approval of the Settlement,
28

1 Defendants will mail CAFA Notices to the Attorney General of the United States, the
2 Attorney General of the State of California, and the Attorney General of any other state
3 where a Plaintiff resides according to Defendants’ records. The Parties intend and believe
4 that the CAFA Notice pursuant to the procedures described in this section comply with the
5 requirements of CAFA; will seek approval of these procedures for CAFA Notice in
6 Plaintiffs’ motion for preliminary approval of the Settlement; and will request the Court to
7 adjudicate the validity of the CAFA Notice in the motion for final approval of the
8 Settlement and bar any Plaintiff’s claim to void or avoid the Settlement under CAFA.

9 (b) Preliminary Settlement Hearing. Plaintiffs and Defendants
10 shall jointly request a hearing before the Court, for a mutually convenient date, to request
11 Preliminary Approval of the Settlement.

12 (c) Preliminary Approval Order. In conjunction with this hearing,
13 Plaintiff will submit this Agreement, which sets forth the terms of this Settlement, and will
14 include proposed forms of all notices and other documents as attached hereto necessary to
15 implement the Settlement. Simultaneous with the filing of the Stipulation of Settlement
16 and solely for purposes of this Settlement, Plaintiffs will request the Court to enter the
17 Preliminary Approval Order (“Preliminary Approval Order” or “Order”) (attached as
18 Exhibit 3 hereto), preliminarily approving the proposed Settlement, and setting a date for a
19 Settlement Hearing to determine final approval of the Settlement. The Order shall provide
20 for notice of the Settlement and related matters to be sent to Plaintiffs as specified herein.

21 (d) Notice to Plaintiffs. Notice of the Settlement shall be provided
22 to Plaintiffs using the following procedures:

23 (1) Claims Administrator. The Claims Administrator shall
24 be responsible for preparing, printing and mailing the Notice of Settlement of Class
25 Action; Settlement Hearing; and Claim, Consent, and Exclusion Procedures (“Notice”)
26 (attached as Exhibit 1 hereto) and the Claim Form/FLSA Consent Form (attached as
27 Exhibit 2 hereto) (collectively referred to as the “Notice Packet”) as directed by the Court
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1 to the Plaintiffs; calculating Settlement Awards; receiving and reviewing the Claim Forms
2 submitted by Class Members to determine eligibility for and amount of payment of any
3 Federal Law Awards, along with the amount of all payroll tax deductions to be withheld;
4 keeping track of opt-outs; drafting and mailing checks to Class Members and Settlement
5 Class Members; and for such other tasks as the Parties mutually agree or the Court orders
6 the Claims Administrator to perform. The Parties each represent they do not have any
7 financial interest in the Claims Administrator or otherwise have a relationship with the
8 Claims Administrator that could create a conflict of interest.

9 Defendants shall be responsible for paying over to the Claims Administrator
10 at such times as requested by the Claims Administrator, and as set forth herein, those
11 amounts necessary to enable the Claims Administrator to pay Class Members, Settlement
12 Class Members, Named Plaintiff, and Class Counsel.

13 (2) Notice By First-Class Mail. Within fourteen (14) days
14 after receipt of the Class List and Data Report from Defendants as provided herein, the
15 Claims Administrator shall mail a jointly prepared Notice Packet to Plaintiffs via first-class
16 regular U.S. mail. Plaintiffs will have sixty (60) days from the mailing of the Notice
17 Packet to submit their claims, opt-out of, or file objections to the settlement (“Claims
18 Period”). Prior to mailing, the Claims Administrator will perform a search based on the
19 National Change of Address Database information to update and correct for any known or
20 identifiable address changes and, if necessary, perform reasonable skip-tracing efforts to
21 locate Plaintiffs. If a new address is obtained by way of a returned Notice Packet, the
22 Claims Administrator shall promptly forward the original Notice Packet to the updated
23 address via first-class regular U.S. mail indicating on the original Notice Packet the date of
24 such re-mailing. Thirty (30) days after the mailing of the Notice Packet, the Claims
25 Administrator will mail a postcard to Plaintiffs to remind Plaintiffs to submit their claims.

26 If any Class Member files a defective Claim Form postmarked before the
27 submission deadline, the Claims Administrator shall send a Cure Letter to such Class
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1 Member advising him/her that the claim is defective and must be cured to become valid.
2 The Claims Administrator must mail the Cure Letter within five (5) business days of
3 receiving a defective claim. The Cure Letter shall state that the Class Member has fifteen
4 (15) days from the date of the mailing of the Cure Letter or until the submission deadline,
5 whichever date is later, to postmark a revised claim. If a Class Member responds to a Cure
6 Letter by filing a second defective claim, then the Claims Administrator shall have no
7 further obligation to give notice of a need to cure. Such defective claims will be
8 considered invalid but the Class Members will remain Class Members and will receive
9 their respective Settlement Awards. The Parties reserve the right to accept late and/or
10 otherwise deficient Claim Forms upon mutual agreement of Counsel.

11 All Claim Forms will be submitted to the Claims Administrator, who will
12 certify jointly to Class Counsel and Defendants' Counsel whether the forms were timely
13 submitted. The Claims Administrator shall regularly report to the Parties, in written form,
14 the substance of the work performed, the basis for any denial of a claim, and the total
15 amount of Claims approved for payment and/or paid. The Claims Administrator will, on a
16 weekly basis during and for a reasonable period following the Claim Period, provide
17 updates to Class Counsel and Defense Counsel as to the number of Plaintiffs who
18 submitted (i) valid opt-out requests for exclusions; (ii) valid Claim Forms; (iii) deficient
19 Claim Forms; and (iv) objections. To the extent practicable, weekly updates shall set forth
20 the number of Workweeks claimed by Settlement Class Members who submitted a valid
21 Claim Form. To the extent practicable, the weekly updates shall also provide updated data
22 on the extent of Class Notices and Claim Forms that are returned undeliverable and any re-
23 mailing efforts.

24 Within ten (10) days after the close of the Claim Period, the Claims
25 Administrator will prepare a declaration to be provided to Class Counsel and Defendant's
26 Counsel for filing in support of Plaintiffs' motion for final approval attesting to the
27 following: (i) its mailing efforts regarding the Class Notice and Claim Form; (ii) its receipt
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1 of the valid Claim Forms and valid requests for exclusion, and its inability to deliver the
2 Class Notice and Claim Form to Plaintiffs, if any; (iii) the number of Class Members and
3 Settlement Class Members and the total number of claimed Workweeks out of the total
4 number of Workweeks for all Settlement Class Members; (iv) the highest and lowest
5 estimated Settlement Payments, along with the estimated average Settlement Payment. No
6 less than ten (10) days before the Final Approval Hearing, the Claims Administrator will
7 prepare and submit to Class Counsel and Counsel for Defendants for filing in support of
8 the motion any supplemental declaration as applicable.

9 In the event the procedures in this paragraph are followed and the intended
10 recipient of a Notice Packet still does not receive the Notice Packet, the intended recipient
11 shall remain a Class Member, and his or her Settlement Award shall be remitted to the
12 California Department of Industrial Relations Unclaimed Wages Fund in accordance with
13 California's Unclaimed Property Law so that the Class Member will have his or her
14 Settlement Award available to him or her per the applicable claim procedure to request that
15 money from the State of California, and will be bound by all terms of the Settlement and
16 any Final Judgment entered by the Court if the Settlement is approved by the Court.

17 (e) Procedure for Payment of Settlement Awards. Except for
18 Plaintiffs who submit valid and timely requests for exclusion as provided herein, all Class
19 Members shall receive a State Law Award and those Class Members who have submitted a
20 valid and timely Consent Form opting into the FLSA Collective Action shall also receive a
21 Federal Law Award, distributed by Defendants through the Claims Administrator within
22 thirty (30) days of the Effective Date.

23 The Consent Form shall include instructions on how to submit the Form, and
24 shall notify Plaintiffs that the Consent Form must be completed, signed and returned by
25 mail no later than sixty (60) days after the date the Form was mailed (the "Claims Period")
26 for a Plaintiff to become a Settlement Class Member and be eligible to receive a Federal
27 Law Award. Plaintiffs shall be notified that if they do not submit a valid and timely
28

1 request for exclusion, they will still become a Class Member and receive a State Law
2 Award, although at a lower amount than if they submit a Consent Form and become
3 Settlement Class Members. The date of the postmark on the return envelope shall be the
4 exclusive means used to determine whether a Plaintiff has “timely” returned his/her
5 Consent Form on or before the Claim Deadline. Consent Forms received by the Claims
6 Administrator that have been postmarked after the Claim Deadline shall be disregarded,
7 absent mutual agreement of Class Counsel and Defense Counsel. For purposes of this
8 Agreement, a Consent Form shall be deemed “valid” only if: (1) the Plaintiff has provided
9 on the Consent Form his or her name, last four digits of his/her social security number and
10 telephone number; (2) the Plaintiff has dated and signed the Consent Form; and (3) the
11 name and last four digits of his/her social security number provided by the Plaintiff on the
12 Form match Defendants’ records as provided to the Claims Administrator. If a Plaintiff’s
13 Consent Form is defective as to any of these three requirements, the Plaintiff shall be given
14 an opportunity to cure the defect(s). Any such Consent Form shall be returned to the
15 Plaintiff, who will be informed of the defect(s). The Plaintiff will be given fifteen (15)
16 days from the date the Consent Form was mailed back to the Plaintiff within which to cure
17 the defect(s) and return the Consent Form to the Claims Administrator. If the revised
18 Consent Form is not postmarked within that Cure Period, it shall be deemed untimely and
19 the claim will be rejected. The name and last four digits of a social security number
20 provided by the Plaintiff will be deemed to match Defendants’ records only if: (1) both the
21 first name and the last name and the last four digits of his/her social security number
22 provided by the Plaintiff match Defendants’ records; or (2) the first name and the last four
23 digits of his/her social security number provided by the Plaintiff match Defendants’
24 records and it appears the last name has been changed as a result of a change in marital or
25 domestic partner status or pursuant to a valid court order.

26 Although Plaintiffs who do not submit valid and timely Consent Forms shall
27 not receive an Federal Law Award, such persons who do not opt out shall nonetheless be
28

1 Class Members, shall receive his or her State Law Award, and will be bound by all terms
2 of the Settlement and any Final Judgment entered in this Action if the Settlement is
3 approved by the Court. After the conclusion of the defect cure period, the Claims
4 Administrator will send a Notice of Denied Claim Form to any Class Member who had
5 submitted a Consent Form that was not timely and/or not valid, stating the reason the claim
6 was denied, should counsel decide not to accept the late/deficient Claim.

7 State Law Awards for Class Members and Federal Law Awards for
8 Settlement Class Members shall be paid pursuant to the settlement formula set forth herein
9 within thirty (30) days after the Effective Date. The Claims Administrator’s determination
10 of eligibility for, and the amounts of, any Settlement Payments under the terms of this
11 Agreement, shall be conclusive, final and binding on all Parties, including all Class
12 Members and Settlement Class Members.

13 Checks paid to Class Members and Settlement Class Members shall remain
14 valid and negotiable for one hundred twenty (120) days from the date of their issuance
15 (“Check Stale Date”) and may thereafter automatically be canceled if not cashed by a
16 Class Member or Settlement Class Member within that time, at which time the Class
17 Member or Settlement Class Member’s claim will be deemed void and of no further force
18 and effect. The funds corresponding to voided checks pursuant to this paragraph shall be
19 distributed *cy pres* pursuant to California Code of Civil Procedure section 384, as
20 described further herein.

21 (f) Procedure for Objecting to or Requesting Exclusion From
22 Class Action Settlement.

23 (1) Procedure for Objecting. The Notice shall provide that
24 Class Members who wish to object to the Settlement must file with the Court and serve on
25 counsel for the Parties a written statement objecting to the Settlement. Such written
26 statement must be filed with the Court and served on counsel for the Parties no later than
27 sixty (60) days after the date the Notice is first mailed (the “Objection Deadline Date”).
28

1 No Class Member shall be entitled to be heard at the final Settlement Hearing (whether
2 individually or through separate counsel) or to object to the Settlement, and no written
3 objections or briefs submitted by any Class Member shall be received or considered by the
4 Court at the Settlement Hearing, unless written notice of the Class Member’s intention to
5 appear at the Settlement Hearing, and copies of any written objections or briefs, shall have
6 been filed with the Court and served on counsel for the Parties on or before the Objection
7 Date. The Parties will be permitted to respond in writing to such objections prior to the
8 Final Approval Hearing. Class Members who fail to file and serve timely written
9 objections in the manner specified above shall remain Class Members and shall be deemed
10 to have waived any objections and shall be foreclosed from making any objection (whether
11 by appeal or otherwise) to the Settlement.

12 (2) Procedure for Requesting Exclusion. The Notice shall
13 provide that Plaintiffs who wish to exclude themselves from the Plaintiff Class must
14 submit a written statement requesting exclusion from the Plaintiff Class on or before the
15 Objection/Exclusion Deadline Date. The Opt-Out Request must additionally state in
16 substance:

17 “I have read the Class Notice and I wish to opt out of the class action and the
18 settlement of the following case: *Helton v. New Bern Transport, et al.*, Case
19 No. 3:17-cv-001135-EMC. I understand that by opting out of the class
20 action and the settlement that I will not be bound by any judgment in the
21 case and will not be entitled to receive any payment from the settlement.”

22 Such written request for exclusion must contain the name, address, telephone
23 number and last four digits of Social Security number of the person requesting exclusion
24 and the location and years of his or her employment by Defendants, must be returned by
25 mail to the Claims Administrator at a specified address, and must be postmarked on or
26 before the Objection Date. The date of the postmark on the return mailing envelope shall
27 be the exclusive means used to determine whether a request for exclusion has been timely
28 submitted. Any Plaintiff who opts-out of the Plaintiff Class will not be entitled to any
recovery under the Settlement and will not be bound by the Settlement or have any right to

1 object, appeal or comment thereon. Plaintiffs who fail to submit a valid and timely request
2 for exclusion on or before the Objection Date shall be Class Members and shall be bound
3 by all terms of the Settlement and any Final Judgment entered in this Class Action if the
4 Settlement is approved by the Court.

5 The Claims Administrator shall provide Counsel for Defendants with
6 “Database Reports” reflecting the names, social security numbers, and the amount of the
7 Payout Fund allocated to all Plaintiffs who opt-out of the Plaintiff Class. The Claims
8 Administrator shall not share this information with Plaintiffs’ Counsel.

9 (g) No Solicitation of Settlement Objections or Exclusions. The
10 Parties agree to use their best efforts to carry out the terms of this Settlement. At no time
11 shall any of the Parties or their counsel seek to solicit or otherwise encourage Plaintiffs to
12 submit written objections to the Settlement or requests for exclusion from the Settlement
13 Class, or appeal from the Court’s Final Judgment.

14 (h) Option to Terminate Settlement. If, after the
15 Objection/Exclusion Deadline Date and before the Settlement Hearing referenced in
16 paragraph IX.12(i) below, the number of Plaintiffs who have timely filed with the Court
17 requests for exclusion total in number more than the number specified in a separate
18 Supplemental Agreement between the Parties, Defendants shall have, in their sole
19 discretion, the option to terminate this Settlement in accordance with the procedures set
20 forth in the Supplemental Agreement. The Supplemental Agreement will not be filed with
21 the Court unless and until a dispute arises among the Parties concerning its interpretation
22 or application or the Court so orders, and in either event it shall be filed and maintained by
23 the Court under seal.

24 (i) Final Settlement Approval Hearing and Entry of Final
25 Judgment. Upon expiration of the claim period, with the Court’s permission, a Settlement
26 Hearing shall be conducted to determine final approval of the Settlement along with the
27 amount properly payable for (i) the Fees Award and Costs Award, (ii) Named Plaintiff’s
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1 Service Award/General Release Payment, (iii) Claims Administration Expenses, and (iv)
2 the PAGA Payment to the LWDA. Upon final approval of the Settlement by the Court at
3 or after the Settlement Hearing, the Parties shall present a Final Judgment and Order of
4 Dismissal with Prejudice (“Final Judgment”) (attached as Exhibit 4 hereto) to the Court for
5 its approval.

6 The Claims Administrator shall keep Defendants and Defendants’ counsel
7 apprised of all distributions from the Settlement Fund and upon completion of
8 administration of that portion of the Settlement, the Claims Administrator shall provide
9 written certification, under penalty of perjury, of such completion to the Court and counsel
10 for all Parties.

11 Administration of the Settlement shall be completed on or before the date
12 one hundred eighty (180) days after the Effective Date. Upon completion of
13 administration of the Settlement, Defendants shall provide written certification, under
14 penalty of perjury, of such completion to the Court and Plaintiffs’ Counsel. Also upon
15 completion of administration of the Settlement, the Claims Administrator shall provide
16 written certification, under penalty of perjury, of such completion to the Court and counsel
17 for all Parties, as provided herein. Finally, Defendants or the Claims Administrator shall
18 submit redacted Claim Forms to the Court for approval.

19 (j) Administration Costs. All of Defendants’ own legal fees, costs
20 and expenses incurred in this Action shall be borne by Defendants. In accordance with
21 paragraph IX.6, claims administration expenses will be part of the Settlement Fund. The
22 Parties agree to cooperate in the Settlement administration process and to make all
23 reasonable efforts to control and minimize the costs and expenses incurred in
24 administration of the Settlement.

25 (k) Nullification of Settlement Agreement. In the event: (i) the
26 Court does not enter the Order specified herein; (ii) the Court does not finally approve the
27 Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided
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1 herein which becomes final as a result of the occurrence of the Effective Date; or (iv) the
2 Settlement does not become final for any other reason, this Settlement Agreement shall be
3 null and void and any order or judgment entered by the Court in furtherance of this
4 Settlement shall be treated as void ab initio. In such a case, the Parties and any funds to be
5 awarded under this Settlement shall be returned to their respective statuses as of the date
6 and time immediately prior to the execution of this Agreement, and the Parties shall
7 proceed in all respects as if this Settlement Agreement had not been executed, except that
8 any fees already incurred by the Claims Administrator shall be paid for by Defendants and
9 shall not be repaid to Defendants. In the event an appeal is filed from the Court's Final
10 Judgment, or any other appellate review is sought prior to the Effective Date,
11 administration of the Settlement shall be stayed pending final resolution of the appeal or
12 other appellate review.

13 13. Privacy of Documents and Information. Plaintiffs and their counsel
14 agree that none of the documents and information provided to them by Defendants shall be
15 used for any purpose other than settlement of this Class Action. Defendants agree that the
16 identities of those Settlement Class Members who submit Claim Forms will not be
17 disclosed to those Settlement Class Members' direct supervisors at Defendants.

18 14. No Effect on Employee Benefits. The Service Award/General
19 Release Payment and Settlement Payments paid to Named Plaintiff, Class Members, and
20 Settlement Class Members shall be deemed not to be pensionable earnings and shall not
21 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g.,
22 vacations, holiday pay, retirement plans, etc.) of the respective Named Plaintiff, Class
23 Members, or Settlement Class Members. The Parties agree that any Service
24 Award/General Release Payment and Settlement Payments paid to Named Plaintiff, Class
25 Members, and Settlement Class Members under the terms of this Agreement do not
26 represent any modification of Named Plaintiff's, Class Members', or Settlement Class
27 Members' previously credited hours of service or other eligibility criteria under any
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1 employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
2 Further, any Service Award/General Release Payment or Settlement Payments hereunder
3 shall not be considered “compensation” in any year for purposes of determining eligibility
4 for, or benefit accrual within, an employee pension benefit plan or employee welfare
5 benefit plan sponsored by Defendants.

6 15. Publicity. The Parties agree that, prior to Preliminary Approval of the
7 Settlement, the terms of this Settlement will be kept confidential.

8 From and after Preliminary Approval of the Settlement, Class Counsel and
9 Named Plaintiff may only comment regarding the specific terms of this Agreement: (1) as
10 required by law; or (2) as required under the terms of this Agreement. In all other cases,
11 Class Counsel and Named Plaintiff agree to not publicize this Settlement in any way.
12 Neither Named Plaintiff nor Class Counsel shall hold any press conference, make any
13 press release, make statements to the press, publish the settlement on the internet or social
14 media, or in any way affirmatively publicize any information related in any way to the
15 Settlement. The Parties agree that damages from violation of this provision are significant,
16 and impossible to calculate. They therefore agree that any violation of this provision shall
17 subject the Plaintiff and/or his Counsel to liquidated damages in the amount of 10,000.00
18 for each such breach.

19 16. No Admission By the Released Parties. Defendants and the Released
20 Parties deny any and all claims alleged in this Class Action and deny all wrongdoing
21 whatsoever. This Agreement is not a concession or admission, and shall not be used
22 against Defendants or any of the Released Parties as an admission or indication with
23 respect to any claim of any fault, concession or omission by Defendants or any of the
24 Released Parties. Whether or not the Settlement is finally approved, neither the
25 Settlement, nor any document, statement, proceeding or conduct related to this Agreement,
26 nor any reports or accounts thereof, shall in any event be:

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1 (a) construed as, offered or admitted in evidence as, received as, or
2 deemed to be evidence for any purpose adverse to the Released Parties, including, but not
3 limited to, evidence of a presumption, concession, indication or admission by any of the
4 Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or

5 (b) disclosed, referred to or offered or received in evidence against
6 any of the Released Parties, in any further proceeding in the Class Action, or any other civil,
7 criminal or administrative action or proceeding except for purposes of settling this Class
8 Action pursuant to this Agreement.

9 17. Exhibits and Headings. The terms of this Agreement include the
10 terms set forth in any attached Exhibits 1-4, which are incorporated by this reference as
11 though fully set forth herein. Any Exhibits to this Agreement are an integral part of the
12 Settlement. The descriptive headings of any paragraphs or sections of this Agreement are
13 inserted for convenience of reference only and do not constitute a part of this Agreement.

14 18. Interim Stay of Proceedings. The Parties agree to hold all
15 proceedings in the Class Action, except such proceedings necessary to implement and
16 complete the Settlement, in abeyance pending the Settlement Hearing to be conducted by
17 the Court.

18 19. Amendment or Modification. This Agreement may be amended or
19 modified only by a written instrument signed by counsel for all Parties or their successors-
20 in-interest.

21 20. Entire Agreement. With the exception of the separate supplemental
22 agreement referenced in paragraph IX.12(h), this Agreement and any attached Exhibits
23 constitute the entire agreement among these Parties, and no oral or written representations,
24 warranties or inducements have been made to any Party concerning this Agreement or its
25 Exhibits other than the representations, warranties and covenants contained and
26 memorialized in such documents.

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1 21. Authorization to Enter Into Settlement Agreement. Counsel for all
2 Parties warrant and represent they are expressly authorized by the Parties whom they
3 represent to negotiate this Agreement and to take all appropriate action required or
4 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms,
5 and to execute any other documents required to effectuate the terms of this Agreement.
6 The Parties and their counsel will cooperate with each other and use their best efforts to
7 effect the implementation of the Settlement.

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

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

14 24. Counterparts. This Agreement may be executed in one or more
15 counterparts. All executed counterparts and each of them shall be deemed to be one and
16 the same instrument provided that counsel for the Parties to this Agreement shall exchange
17 among themselves original signed counterparts.

18 25. This Settlement is Fair, Adequate and Reasonable. The Parties
19 believe this Settlement is a fair, adequate and reasonable settlement of this Class Action
20 and have arrived at this Settlement in arms-length negotiations, taking into account all
21 relevant factors, present and potential. This Settlement was reached after extensive
22 negotiations.

23 26. Jurisdiction of the District Court. The Court shall retain jurisdiction
24 with respect to the interpretation, implementation and enforcement of the terms of this
25 Agreement and all orders and judgments entered in connection therewith, and the Parties
26 and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,
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1 implementing and enforcing the settlement embodied in this Agreement and all orders and
2 judgments entered in connection therewith.

3 27. Cooperation and Drafting. Each of the parties has cooperated in the
4 drafting and preparation of this Agreement. Hence, in any construction made to this
5 Agreement, the same shall not be construed against any of the parties.

6 28. Invalidity of Any Provision. Before declaring any provision of this
7 Agreement invalid, the Court shall first attempt to construe the provisions valid to the
8 fullest extent possible consistent with applicable precedents so as to define all provisions
9 of this Agreement valid and enforceable.

10 29. Named Plaintiff's Waiver of Right to be Excluded and Object.
11 Named Plaintiff agrees to sign this Agreement and by signing this Agreement is bound by
12 the terms herein stated and further agrees not to request to be excluded from the Settlement
13 Class and agrees not to object to any of the terms of this Agreement. Non-compliance by
14 Named Plaintiff with this paragraph shall be void and of no force or effect. Any such
15 request for exclusion or objection shall therefore be void and of no force or effect.

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17 NAMED PLAINTIFF

18 Date: 6/22/2018

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21 Nathaniel Helton

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Date:

PLAINTIFFS' COUNSEL

THE TURLEY & MARA LAW FIRM, APLC

Date: _____

By: _____

William Turley
David Mara
Jamie Serb
Attorneys for Plaintiffs

DEFENDANTS

Date: JUNE 20, 2013

By: 

Its: FOR EMILY L. HAYES, III COUNSEL

DEFENDANTS' COUNSEL

**SHEPPARD MULLIN RICHTER & HAMPTON
LLP**

Date: _____

By: _____

Samantha D. Hardy
Ashley T. Hirano
Attorneys for Defendants
PEPSI-COLA SALES AND
DISTRIBUTION, INC.; NEW BERN
TRANSPORT CORPORATION; AND
PEPSICO, INC.

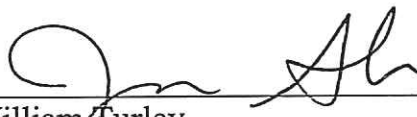
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Date:

PLAINTIFFS' COUNSEL

THE TURLEY & MARA LAW FIRM, APLC

Date: 6/22/13

By: 

William Turley
David Mara
Jamie Serb
Attorneys for Plaintiffs

DEFENDANTS

Date: _____

By: _____
Its: _____

DEFENDANTS' COUNSEL

SHEPPARD MULLIN RICHTER & HAMPTON
LLP

Date: _____

By: _____

Samantha D. Hardy
Ashley T. Hirano
Attorneys for Defendants
PEPSI-COLA SALES AND
DISTRIBUTION, INC.; NEW BERN
TRANSPORT CORPORATION; AND
PEPSICO, INC.

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Date:

PLAINTIFFS' COUNSEL

THE TURLEY & MARA LAW FIRM, APLC

Date: _____

By: _____

William Turley
David Mara
Jamie Serb
Attorneys for Plaintiffs

DEFENDANTS

Date: _____

By: _____

Its: _____

DEFENDANTS' COUNSEL

**SHEPPARD MULLIN RICHTER & HAMPTON
LLP**

Date: 6/22/18

By:  _____

Samantha D. Hardy
Ashley T. Hirano
Attorneys for Defendants
PEPSI-COLA SALES AND
DISTRIBUTION, INC.; NEW BERN
TRANSPORT CORPORATION; AND
PEPSICO, INC.

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LIST OF EXHIBITS

1. Class Notice
2. Claim Form
3. Preliminary Approval Order
4. Final Judgment and Order of Dismissal With Prejudice