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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

COORDINATION PROCEEDING
 SPECIAL TITLE (RULE 3.550)

Judicial Council Coordination Proceeding No.
 JCCP 4789

**EXPRESS MESSENGER SYSTEMS
 WAGE AND HOUR CASES**

ASSIGNED FOR ALL PURPOSES TO:
 HON. KENNETH FREEMAN, SPRING
 STREET, DEPT. 14

Included Actions:

**AMENDED CLASS ACTION
 SETTLEMENT AGREEMENT**

*Lewis v. Express Messenger Systems, Inc.,
 et al.*, Los Angeles County Superior Court
 No. BC501521

Complaint Filed: February 22, 2013 (*Lewis*);
 FAC Filed: January 29, 2014 (*Lewis*)

*Leal v. Express Messenger Systems, Inc., et
 al.*, Los Angeles County Superior Court
 No. BC509904

Complaint Filed: May 23, 2013 (*Leal*)

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This Amended Class Action Settlement Agreement and Release, including Exhibits A and B hereto (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal (“Plaintiffs”) on behalf of themselves and the Settlement Class (as defined below) and the State of California Labor and Workforce Development Agency (“LWDA”), on the one hand, and Defendant OnTrac Logistics, Inc. (f/k/a Express Messenger Systems, Inc.), dba OnTrac (“Defendant” or “OnTrac”) on the other hand. Plaintiffs and Defendant (collectively, the “Parties”) enter into this Agreement to effect a full and final settlement and preclusive judgment resolving all claims based on or reasonably related to the conduct alleged in the complaints filed in the actions against Defendant in *Thomas Lewis and Aurelio Sanchez v. Express Messenger Systems, Inc., dba OnTrac*, Case No: BC501521 filed in Los Angeles Superior Court on February 22, 2013, and *Eliseo Leal v. Express Messenger Systems, Inc., dba OnTrac*, Case No: BC509904 filed in Los Angeles Superior Court on May 23, 2013, and all amended complaints filed thereafter, as well as the claims brought or that could have been brought in the Class Action Complaint filed in Los Angeles County Superior Court on December 14, 2017 (collectively, the “Action”), and all claims based on to the facts asserted therein. This Agreement is intended to fully and finally compromise, resolve, discharge, and settle the Released Claims, as defined and on the terms set forth below, and to the full extent reflected herein, subject to the approval of the Court.

I. RECITALS

This Agreement is made in consideration of the following facts:

1.1 WHEREAS, on February 22, 2013, Plaintiff Thomas Lewis filed a putative class action complaint against Defendant, then named Express Messenger Systems, Inc., dba OnTrac, in Los Angeles Superior Court, Case No. BC501521, asserting various wage-related claims, on behalf of himself and a proposed class consisting of all drivers in California making deliveries for OnTrac’s clients and classified as independent contractors, excluding Regional Service Providers and multiple-route drivers. The Lewis Complaint alleged the following eight causes of action (1) unpaid overtime, (2) unpaid minimum wages, (3) unpaid meal period premiums, (4) unpaid rest period premiums, (5) wages not timely paid upon termination, (6) unpaid business expenses, (7) non-compliant wage statements, and (8) unfair business practices. On January 31, 2014, Plaintiff Lewis filed a First

1 Amended Complaint, adding Plaintiff Aurelio Sanchez as a party and a cause of action for (9) violation
2 of the Private Attorneys General Act ("PAGA").

3 1.2 WHEREAS, on May 23, 2013, Plaintiff Eliseo Leal filed a putative class action
4 complaint against Defendant, then named Express Messenger Systems, Inc., dba OnTrac, in Los
5 Angeles Superior Court, Case No. BC509904, asserting various wage-related claims, on behalf of
6 himself and a proposed class consisting of all drivers in California making deliveries for OnTrac's
7 clients and classified as independent contractors, excluding back-up drivers. The Leal Complaint
8 alleged the following eleven causes of action (1) declaratory relief, (2) failure to pay minimum wages,
9 (3) failure to pay wages at the designated rate, (4) failure to pay overtime wages, (5) failure to
10 reimburse expenses, (6) quantum meruit/unjust enrichment, (7) failure to provide meal periods, (8)
11 failures to provide rest periods, (9) failure to timely furnish accurate itemized wage statements, (10)
12 waiting time penalties, and (11) violation of the unfair competition law.

13 1.3 WHEREAS, on August 5, 2013, the Court related the *Lewis* action and the *Leal* action,
14 and assigned the *Lewis* action as the lead action.

15 1.4 WHEREAS, Defendant denies the allegations in the Action; denies that it has engaged
16 in any wrongdoing; denies that Plaintiffs' allegations constitute valid claims; denies that Plaintiffs'
17 claims could properly be maintained as a PAGA representative action; and states that it is entering
18 into this Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation,
19 and on the express conditions that (a) if for any reason the Settlement is not finalized according to the
20 terms of this Agreement, the Settlement and the documents generated as a result of the Settlement
21 shall not be usable for any purpose in the Action, and (b) this Settlement and the documents generated
22 as a result of the Settlement are not admissible or usable in any other civil or administrative proceeding
23 or any arbitration, except to the extent necessary to enforce this Settlement and the orders, judgment
24 and agreements arising from this Settlement;

25 1.5 WHEREAS, a bona fide dispute exists as to whether any amount of wages or penalties
26 are due from Defendant to any Plaintiff, Settlement Class Member, or to the LWDA;

27 1.6 WHEREAS, while litigating the Action, the parties engaged in substantial discovery,
28 including requests for depositions, document requests, interrogatories, and requests for admission

propounded by both Plaintiffs and Defendant, and to which both responded and produced documents, and all parties provided testimony;

1.7 WHEREAS, in preparation for mediation, the Parties also engaged in informal discovery, exchanging information and reviewing and analyzing extensive data made available by Defendant, which enabled Plaintiffs and the mediator to thoroughly evaluate Plaintiffs' claims and the claims of a potential settlement class, and the likely outcomes, risks and expense of pursuing litigation;

1.8 WHEREAS, the Parties attended an in-person mediation session with professional mediator Mark Rudy, Esq., where the Parties discussed settlement terms at length with the mediator and directly for some time after, before agreeing to the terms of this arm's-length Settlement;

1.9 WHEREAS, although the parties did not reach a settlement at mediation, negotiations continued at arms-length, and on October 6, 2020, counsel for both parties executed a Memorandum of Understanding that contained the preliminary terms of this Settlement Agreement.

1.10 WHEREAS, Plaintiffs and Class Counsel believe that the Settlement provides a favorable recovery for the Settlement Class, based on the claims asserted, the evidence developed, and the damages that might be proven against Defendant in the Action. Plaintiffs and Class Counsel further recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendant through trial and appeals. They also have considered the uncertain outcome and the risk of any litigation, especially in complex litigation such as the Action, as well as the difficulties and delays inherent in any such litigation. They are also mindful of the inherent challenges of proof and the strength of the defenses to the alleged claims, and therefore believe that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice as set forth herein, subject to the approval of the Court;

1.11 WHEREAS, Plaintiffs and Class Counsel, based on their own independent investigations and evaluations, have examined the benefits to be obtained under the terms of this Settlement Agreement, have considered the claims of Plaintiffs, the claims of Settlement Class Members, the risks associated with the continued prosecution of the Action, and the likelihood of success on the merits of the Action, and believe that, after considering all the circumstances, including the uncertainties surrounding the risk of further litigation and the defenses that defendant has asserted

1 and could assert, the proposed Settlement set forth in this Agreement is fair, reasonable, adequate, in
2 the best interests of Plaintiffs and the Settlement Class, and confers substantial benefits upon the
3 Settlement Class;

4 1.12 WHEREAS, Plaintiffs warrant and represent that they are effecting this Settlement and
5 executing this Agreement after having received full legal advice as to their respective rights and have
6 had the opportunity to obtain independent counsel to review this Agreement;

7 1.13 WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement,
8 and any of the terms of this Agreement, and any documents filed in connection with the Settlement
9 shall not constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding,
10 or evidence of: (i) any wrongdoing, (ii) any violation of any statute or law, (iii) any liability on the
11 claims or allegations in the Action on the part of any Released Parties, or (iv) the propriety of certifying
12 a litigation class or pursuing representative relief under the PAGA in the Action or any other
13 proceeding; and shall not be used by any person for any purpose whatsoever in any legal proceeding,
14 including but not limited to arbitrations, and/or other civil and/or administrative proceedings, other
15 than a proceeding to enforce the terms of the Agreement. There has been no final determination by
16 any court as to the merits of the claims asserted by Plaintiffs against Defendant, nor has there been
17 any final determination as to whether PAGA representative claims may properly be pursued, other
18 than for settlement purposes only;

19 1.14 WHEREAS, for settlement purposes only, Defendant will stipulate to the certification
20 of class claims that are subject to the certification requirements of California Code of Civil Procedure
21 Section 382. Defendant disputes that certification beyond those claims already certified is proper for
22 the purposes of litigating the class claims proposed in or flowing from the claims asserted in the
23 Action;

24 1.15 WHEREAS, the Parties desire to compromise and settle all issues and claims that were
25 or could have been brought against defendant based on the facts alleged in the operative complaint,
26 including all claims brought on behalf of the putative class and PAGA representative basis in the
27 Action;
28

1.16 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by Plaintiffs for themselves and on behalf of the Settlement Class, and by Defendant that, subject to the approval of the Court, the Action shall be settled, and compromised, and the Released Claims shall be finally and fully compromised and settled as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

II. DEFINITIONS

Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth below:

2.1 “Active Settlement Periods” means the best approximation of the total number of periods in which a Settlement Class Member received a payment via Subcontracting Concepts, Inc. (“SCI”) (referred to internally by SCI as settlement payments – unrelated to this Settlement Agreement), based on the records and data maintained by SCI, for each Settlement Class Member from the time period between February 22, 2009 and the date of preliminary approval.

2.2 “Class Counsel” means Marlin & Saltzman LLP, Capstone Law APC, The Hamideh Firm, P.C., and James Hawkins APLC.

2.3 “Class Counsel Award” means (i) the attorneys’ fees for Class Counsel’s litigation and resolution of the Action, and all claims resolved by this Settlement, as awarded by the Court, which will be paid exclusively from the Total Settlement Amount, and may not exceed forty percent (40%) of the Total Settlement Amount and (ii) all expenses and costs incurred by Class Counsel in litigation and resolution of the Action, and all claims resolved by this Settlement, in the amount of \$225,000, which will be paid exclusively from the Total Settlement Amount. To the extent that any amount of the Class Counsel Award is not awarded by the Court, that amount shall be redistributed to the Settlement Class Members pro rata as part of their Individual Settlement Payments.

2.4 “Class Information” means information regarding Settlement Class Members that will in good faith be compiled from the records Subcontracting Concepts, Inc. (a third party provider engaged by OnTrac to provide payment services to Class Members’ Regional Service Providers), and provided to the Settlement Administrator. Class Information shall be provided in a Microsoft Excel spreadsheet and shall include, if possible, for each Settlement Class Member: full name, last known

1 address, social security number, and Active Settlement Periods during each the Settlement Class
2 Period and PAGA Period. Because Settlement Class Members' private information is included in the
3 Class Information, Class Counsel and the Settlement Administrator shall maintain any Class
4 Information received in confidence and shall use and disclose Class Information only for purposes of
5 this Settlement and for no other purpose, and pursuant to the restrictions as described in Paragraph
6 5.4. Further, within the Settlement Administrator's operations, access shall be limited to those
7 personnel with a need to use the Class Information as part of the administration of the Settlement.

8 2.5 "Class Notice" means the notice of class action settlement to be provided to Settlement
9 Class Members, without material variation from the relevant portion of Exhibit A.

10 2.6 "Court" means the Los Angeles County Superior Court of California.

11 2.7 "Effective Date" means one (1) day after which both of the following events have
12 occurred: (i) the Court's Final Approval order has been entered and (ii) the Court's Final Approval
13 order and Judgment have become Final.

14 2.8 "Exclusion/Written Objection Deadline" means the final date by which a Settlement
15 Class Member may either (i) submit a written objection to any aspect of the Settlement, or (ii) request
16 to be excluded from the Settlement. The Exclusion/Written Objection Deadline shall be forty-five
17 (45) days after the Notice Date, and shall be specifically identified and set forth in the Preliminary
18 Approval Order and the Class Notice. In the event Class Notices are re-mailed to Class Members prior
19 to the Exclusion/Written Objection Deadline, the Exclusion/Written Objection Deadline for those
20 Class Members will be extended by fifteen (15) days.

21 2.9 "Final" when referring to a judgment or order, means that (i) the judgment is a final,
22 appealable judgment; and (ii) either (a) no objections were made to the Settlement, (b) objections were
23 made but no appeal has been taken from the judgment as of the date on which all times to appeal
24 therefrom have expired (i.e., 60 calendar days from entry of judgment), or (c) an appeal or other review
25 proceeding of the judgment having been commenced, such appeal or other review is finally concluded
26 and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-
27 argument, petitions for re-hearing en banc, petitions for writ of certiorari, or otherwise, and such appeal
28

1 or other review has been finally resolved in such manner that affirms the judgment order in its entirety,
2 and remittitur has been issued.

3 2.10 “Final Approval” means the Court’s entry of a Final Approval order finally approving
4 this Settlement.

5 2.11 “Final Approval Hearing” means the hearing at or after which the Court will make a
6 final decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, finally
7 approved by the Court.

8 2.12 “Individual Settlement Payment” means the amount payable from the Total Settlement
9 Amount to each PAGA Member, and Settlement Class Member who does not opt out, which shall be
10 issued as non-wages, for which an IRS Form 1099 shall issue if required. The Individual Settlement
11 Payment(s) shall be calculated pursuant to Section V herein.

12 2.13 “Judgment” means the judgment to be entered in the Action on Final Approval of this
13 Settlement. A copy of the Judgment will be made available on the Settlement Administrator’s website.

14 2.14 “Legally Authorized Representatives” means an administrator/administratrix, personal
15 representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian,
16 conservator, or next friend of an incapacitated Settlement Class Member; or any other legally
17 appointed person responsible for handling the business affairs of a Settlement Class Member.

18 2.15 “Named Plaintiffs’ General Released Claims” means any and all past, present, and
19 future claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or
20 liabilities, of any nature and description whatsoever, known or unknown, existing or potential,
21 recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including
22 but not limited to those based in contract or tort, common law or equity, federal, state, or local law,
23 statute, ordinance, or regulation), and for claims for compensatory, consequential, punitive or
24 exemplary damages, statutory damages, penalties, interest, attorneys’ fees, costs or disbursements,
25 against the Released Parties, including unknown claims covered by California Civil Code section
26 1542, as quoted below in Paragraph 9.4, by the Plaintiffs, arising during the period from the beginning
27 of the Plaintiffs’ first interaction with any defendant to the date on which the Court enters the order of
28 Final Approval of this Settlement, for any type of relief that can be released as a matter of law,

1 including, without limitation, claims for wages, damages, unpaid costs, penalties (including civil and
2 waiting time penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation
3 costs, restitution, or injunctive, declaratory or equitable relief, with the exception of any claims which
4 cannot be released as a matter of law. Plaintiffs will generally release all known and unknown claims
5 against the Released Parties, and waive the application of section 1542 of the California Civil Code.
6 The claims released pursuant to this paragraph include but are not limited to the Settlement Class
7 Members' Released Claims, as well as any other claims under any provision of the Fair Labor
8 Standards Act, the California Labor Code, the California Code of Regulations, or any applicable
9 California Industrial Welfare Commission Wage Order(s), and claims under state or federal
10 discrimination statutes, including, without limitation the California Fair Employment and Housing
11 Act, California Government Code section 12940 *et seq.*; the California Constitution; Title VII of the
12 Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. §
13 12101 *et seq.*; the Age Discrimination in Employment Act of 1967, as amended; the Employee
14 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing
15 regulations and interpretive guidelines.

16 2.16 "Net Settlement Amount" means the portion of the Total Settlement Amount that
17 remains after deducting the Class Counsel Award, PAGA Payment, Service Awards, and Settlement
18 Administrator Expenses. The entire Net Settlement Amount will be paid by check to all Settlement
19 Class Members who do not opt out of the Settlement Class, and checks will be negotiable for 180
20 days, after which they will escheat to the State of California Unclaimed Property Fund, to be held
21 there in the name of and for the benefit of such class members under California's escheatment laws as
22 provided by Paragraphs 5.6 and 10.5.

23 2.17 "Notice Date" means the date of the initial distribution of the Class Notice to Settlement
24 Class Members, as set forth in Section VI.

25 2.18 "Opt Out List" means the Court-approved list of all persons who timely and properly
26 request exclusion from the Settlement Class.

27 2.19 "PAGA Claims" means the Plaintiffs' representative claims seeking civil penalties
28 pursuant to PAGA, as alleged in the PAGA pre-filing notice and operative Complaint, and based on

1 all provisions of the Labor Code, Wage Orders or any other statute or regulation identified in the
2 Action to the fullest extent permitted by law. The “PAGA Claims” are released from January 31, 2013
3 through preliminary approval of this Settlement.

4 2.20 “PAGA Members” means all individuals who personally performed last-mile delivery
5 and pickup services for OnTrac in California, who were designated as independent contractors during
6 the PAGA Period, regardless of whether or not they have opted out of the Settlement. Excluded from
7 the definition of “PAGA Members” are (1) individuals designated as Regional Service Providers
8 during the time they were designated as Regional Service Providers, (2) individuals who have
9 previously released claims arising from their alleged misclassification as independent contractors.

10 2.21 “PAGA Payment” means a total payment of \$200,000 to settle all claims under the
11 PAGA. From this amount, 75% will be paid to the LWDA for civil penalties pursuant to the PAGA
12 and 25% will be distributed to all PAGA Members (“PAGA Fund”), and considered penalties for tax
13 reporting purposes.

14 2.22 “PAGA Period” means January 31, 2013 through preliminary approval of this
15 Settlement.

16 2.23 “Plaintiffs” means Thomas Lewis, Aurelio Sanchez, and Eliseo Leal.

17 2.24 “Plan of Allocation” means the plan for allocating the Total Settlement Amount
18 between and among PAGA Members and Settlement Class Members as approved by the Court.

19 2.25 “Preliminary Approval Date” means the date that the Court enters the Preliminary
20 Approval Order and thus: (i) preliminarily approves the Settlement, and the exhibits thereto, and (ii)
21 enters an order providing for notice to the Settlement Class, an opportunity to opt out of the Settlement
22 Class, an opportunity to submit timely and proper objections to the Settlement, and setting a hearing
23 on the fairness of the terms of Settlement, including approval of the Class Counsel Award.

24 2.26 “Preliminary Approval Order” means the order that Plaintiffs and Defendant will seek
25 from the Court, without material variation from Exhibit B. Entry of the Preliminary Approval Order
26 shall constitute preliminary approval of the Settlement Agreement.

27 2.27 “Released Claims” means (i) Settlement Class Members’ Released Claims and (ii)
28 Named Plaintiffs’ General Released Claims.

2.28 “Released Parties” means Defendant OnTrac, as well as Subcontracting Concepts, Inc. (a third party provider designated by OnTrac to provide services to Class Members) and their subsidiaries, officers, directors, members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations, insurers, and any and all other persons, firms and corporations in which Defendant OnTrac and Subcontracting Concepts, Inc. may have an interest.

2.29 “Service Awards” means the amounts approved by the Court to be paid to each of the Plaintiffs, in addition to each Plaintiffs’ respective Individual Settlement Payment(s), in recognition of their efforts in coming forward as named plaintiffs and as consideration for a full, general, and comprehensive release of the Named Plaintiffs’ General Released Claims. The Service Awards amount payable to Plaintiffs shall come exclusively from the Total Settlement Amount and are not to exceed \$15,000 each. To the extent that any amount of the Service Awards are not awarded by the Court, that amount will be redistributed pro rata to the Settlement Class Members as part of their Individual Settlement Payments.

2.30 “Settlement” means the settlement of the Action between and among Plaintiffs and Defendant, as set forth in this Settlement Agreement.

2.31 “Settlement Administrator” means CPT Group, Inc.

2.32 “Settlement Administrator Expenses” means the amount to be paid to the Settlement Administrator exclusively from the Total Settlement Amount, including the total costs, expenses, and fees of the Settlement Administrator. The amount is not to exceed \$40,000 for approximately 9,000 Settlement Class Members. To the extent that any amount of the Settlement Administrator Expenses are not awarded by the Court, that amount will be redistributed pro rata to the Settlement Class Members as part of their Individual Settlement Payments.

2.33 “Settlement Class” means all individuals who personally performed last-mile delivery and pickup services for OnTrac in California, who were designated as independent contractors during the Settlement Period. Excluded from the class definition are (1) individuals designated as Regional Service Providers during the time they were designated as Regional Service Providers, (2) individuals

1 who have previously released claims arising from their alleged misclassification as independent
2 contractors.

3 2.34 “Settlement Class Member” means any member of the Settlement Class.

4 2.35 “Settlement Class Members’ Released Claims” means any and all present and past
5 claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of
6 any nature and description whatsoever, known or unknown, existing or potential, recognized now or
7 hereafter, expected or unexpected, pursuant to any theory of recovery (including those based in
8 contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation,
9 and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages,
10 penalties, interest, attorneys’ fees, costs, or disbursements) based on or reasonably related to the
11 conduct alleged in the operative Complaint during the Settlement Period, and specifically to claims
12 pursuant to California Labor Code sections 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6,
13 221, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 432, 432.5, 510, 512, 551-553, 558, 1174, 1174.5,
14 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2750.3, 2753, 2800, 2802, 2698 et seq. (PAGA
15 Claims), and 3700 et seq.; Cal. Code of Regulations, tit. 8, § 11090; California Business and
16 Professions Code sections 17200 et seq.; and any other similar California state or federal law, for non-
17 payment of wages, minimum wages, overtime wages (including regular rate calculations), expense
18 reimbursement, wage statements, failure to provide workers’ compensation insurance, meal periods,
19 rest breaks, final pay, waiting time penalties, PAGA penalties, restitution, interest, costs and expenses,
20 attorneys’ fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive
21 damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest. “Settlement Class
22 Members’ Released Claims” do not include claims that, as a matter of law cannot be released. The
23 “Settlement Class Members’ Released Claims” are released from February 22, 2009 through
24 preliminary approval of this Settlement.

25 2.36 “Settlement Class Period” means February 22, 2009 through preliminary approval of
26 this Settlement.

27 2.37 “Total Settlement Amount” means Ten Million Five Hundred Thousand Dollars
28 (\$10,500,000), for payment of all claims, which is the maximum amount that Defendant is obligated

to pay under this Settlement Agreement under any circumstances in order to resolve and settle the Action, subject to Court approval. The Total Settlement Amount includes all costs and fees, including, but not limited to, the Class Counsel Award, Settlement Administrator Expenses, escrow costs and expenses, Service Awards, interest, and taxes and tax expenses.

2.38 “Void Date” means the date by which any checks issued to Settlement Class Members shall become void, *i.e.* on the 181st day after mailing.

III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR PRELIMINARY AND FINAL APPROVAL

3.1 Upon execution of this Settlement Agreement, Plaintiffs shall submit to the Court a motion for preliminary approval of the Settlement. The motion for preliminary approval shall include a proposed plan for sending of the Class Notice to Settlement Class Members within sixty (60) days after the Preliminary Approval Date (the Notice Date), and establishing a period of (45) days from the Notice Date within which any Settlement Class Member may (i) request exclusion from the Settlement Class, (ii) object to the proposed Settlement or any part thereof, (iii) object to Class Counsel’s request for the Class Counsel Award and for the Service Awards to the Plaintiffs (the Exclusion/Written Objection Deadline).

3.2 The Parties stipulate to certification of the Settlement Class under California Code of Civil Procedure Section 382, for settlement purposes only, excluding the Settlement Class’s PAGA Claims. The Parties agree that this stipulation shall not be admissible in, and may not be used by any person for any purpose whatsoever in any legal proceeding, including but not limited to any arbitrations and/or any civil and/or administrative proceedings, other than a proceeding to enforce the terms of the Agreement, as further set forth in this Agreement.

3.3 The Parties agree and acknowledge that the PAGA and Settlement Class Members’s contact information “deserves privacy protection,” as those individuals likely provided their information to SCI “with the expectation that it would not be divulged externally except as required to governmental agencies (such as the Internal Revenue Service, the Social Security Administration, etc.) or to benefits providers such as insurance companies.” *Belaire-W. Landscape, Inc. v. Superior Ct.*, 149 Cal. App. 4th 554, 561 (2007). Given these rights, Class Counsel agrees to keep any and all

1 data and other financial and personal information related to the Settlement Class in the strictest
2 confidence, and shall not disclose that data. Class Counsel agrees to submit such necessary data and
3 information to the Court under seal to the extent appropriate under governing law.

4 3.4 The Parties stipulate to the form of, and agree to submit to the Court for its
5 consideration this Settlement Agreement, and the following Exhibits to this Settlement Agreement:
6 Class Notice (Exhibit A); and [Proposed] Preliminary Approval Order (Exhibit B).

7 3.5 Solely for purposes of implementing this Agreement and effectuating the proposed
8 Settlement, the Parties agree and stipulate that:

9 3.5.1 The Court may enter the Preliminary Approval Order, without material
10 variation from Exhibit B, preliminarily approving the Settlement and this Agreement. Among other
11 things, the Preliminary Approval Order shall grant leave to preliminarily certify the Settlement Class
12 for settlement purposes only; approve the Plaintiffs as class representatives, appoint Class Counsel to
13 represent the Settlement Class, and appoint the Settlement Administrator; approve the Class Notice,
14 and the class notice plan embodied in the Settlement Agreement, and approve them as consistent with
15 California Rules of Court 3.766(d) and 3.769(f) and due process; set out the requirements for disputing
16 the information upon which Settlement Class Members' share of the Settlement will be calculated,
17 objecting to the Settlement, excluding Settlement Class Members who timely and properly request to
18 be excluded from the Settlement Class, all as provided in this Agreement; and provide that certification
19 and all actions associated with certification are undertaken on the condition that the certification and
20 other actions shall be automatically vacated and of no force or evidentiary effect if this Agreement is
21 terminated or disapproved, as provided in this Agreement.

22 3.6 Within 10 days of the Final Approval Date, Class Counsel will notify the LWDA of
23 the Preliminary Approval Order.

24 3.7 At the Final Approval Hearing, Plaintiffs shall request entry of a Final Approval order
25 and a Judgment, to be agreed upon by the Parties, the entry of which is a material condition of this
26 Settlement and that, among other things:

27 3.7.1 Finally approves the Settlement as fair, reasonable, and adequate and directs its
28 consummation pursuant to the terms of the Settlement Agreement;

1 3.7.2 Finds that Class Counsel and Plaintiffs adequately represented the Settlement
2 Class for the purpose of entering into and implementing the Agreement;

3 3.7.3 Re-confirms the appointment of the Settlement Administrator and finds that the
4 Settlement Administrator has fulfilled its duties under the Settlement to date;

5 3.7.4 Finds that the Class Notice (i) constituted the best practicable notice; (ii)
6 constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class
7 Members of the pendency of the Action, and their right to exclude themselves from or object to the
8 proposed settlement and to appear at the Final Approval Hearing; (iii) was reasonable and constituted
9 due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable
10 requirements of California Rules of Court 3.766(d) and 3.769(f), due process, and any other applicable
11 rules or law;

12 3.7.5 Approves the Opt-Out List and determines that the Opt-Out List is a complete
13 list of all Settlement Class Members who have timely and properly requested exclusion from the
14 Settlement Class and, accordingly, shall neither share in nor be bound by the Final Approval order and
15 Judgment;

16 3.7.6 Directs that the Final Approval order and Judgment shall be final and entered
17 forthwith;

18 3.7.7 Without affecting the finality of the Final Approval order and Judgment, directs
19 that the Court retains continuing jurisdiction over Plaintiffs, the Settlement Class, and Defendant as to
20 all matters concerning the administration, consummation, and enforcement of this Settlement
21 Agreement;

22 3.7.8 Adjudges that, as of the Final Approval Date, Plaintiffs, and all Settlement Class
23 Members who have not been excluded from the Settlement Class as provided in the Opt-Out List
24 approved by the Court, and their Legally Authorized Representatives, heirs, estates, trustees,
25 executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors,
26 and/or anyone claiming through them or acting or purporting to act for them or on their behalf,
27 regardless of whether they have received actual notice of the proposed Settlement, have conclusively
28 compromised, settled, discharged, and released the Named Plaintiffs' General Released Claims (in the

1 case of Plaintiffs) and Settlement Class Members' Released Claims (in the case of the Settlement Class
2 Members) against Defendant and the Released Parties, and are bound by the provisions of this
3 Agreement;

4 3.7.9 Affirms that PAGA Members are bound by the settlement and release of the
5 PAGA Claims under the Final Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009)
6 as requests for exclusion do not apply to the PAGA Claims, and further affirms that any claim by the
7 LWDA for civil penalties pursuant to PAGA are also extinguished;

8 3.7.10 Declares this Agreement and the Final Approval order and Judgment to be
9 binding on, and have res judicata and preclusive effect as to all pending and future lawsuits or other
10 proceedings: (i) that encompass the Named Plaintiffs' General Released Claims and that are
11 maintained by or on behalf of Plaintiffs and/or their Legally Authorized Representatives, heirs, estates,
12 trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and
13 successors, and/or anyone claiming through them or acting or purporting to act for them or on their
14 behalf, and (ii) that encompass the Settlement Class Members' Released Claims and that are
15 maintained by or on behalf of any Settlement Class Member who has not been excluded from the
16 Settlement Class as provided in the Opt-Out List approved by the Court and/or their Legally
17 Authorized Representatives, heirs, estates, trustees, executors, administrators, principals,
18 beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them
19 or acting or purporting to act for them or on their behalf, regardless of whether the Settlement Class
20 Member previously initiated or subsequently initiates individual litigation or other proceedings
21 encompassed by the Settlement Class Members' Released Claims, and even if such Settlement Class
22 Member never received actual notice of the Action or this proposed Settlement;

23 3.7.11 Determines that the Agreement and the Settlement provided for herein, and any
24 proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or
25 construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-
26 liability or of the certifiability or non-certifiability of a litigation class, or that PAGA representative
27 claims may validly be pursued, or of any misrepresentation or omission in any statement or written
28 document approved or made by any Party; provided, however, that reference may be made to this

1 Agreement and the Settlement provided for herein in such proceedings as may be necessary to
2 effectuate the provisions of this Agreement, as further set forth in this Agreement;

3 3.7.12 Orders that the preliminary approval of the Settlement, certification of the
4 Settlement Class and final approval of the proposed Settlement, and all actions associated with them,
5 are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated
6 or disapproved in whole or in part by the Court, or by any appellate court and/or other court of review,
7 in which event the Agreement and the fact that it was entered into shall not be offered, received, or
8 construed as an admission or as evidence for any purpose, including but not limited to an admission
9 by any Party of liability or non-liability or of any misrepresentation or omission in any statement or
10 written document approved or made by any Party, or of the certifiability of a litigation class or the
11 appropriateness of maintaining a PAGA representative action, as further provided in this Settlement
12 Agreement;

13 3.7.13 Authorizes the Parties, without further approval from the Court, to mutually
14 agree to and adopt such amendments, modifications, and expansions of this Agreement, including all
15 Exhibits hereto, as (i) shall be consistent in all material respects with the Final Approval order and (ii)
16 do not limit the rights of Settlement Class Members; and

17 3.7.14 Contains such other and further provisions consistent with the terms of this
18 Settlement Agreement to which the Parties expressly consent in writing.

19 3.8 At the Final Approval Hearing and as a part of the final approval of this Settlement,
20 Class Counsel will also request approval of the Plan of Allocation set forth in Section V. Any
21 modification to the Plan of Allocation by the Court shall not (i) affect the enforceability of the
22 Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement
23 Agreement, or (iii) impose any obligation on the Defendant or any Released Party to increase the
24 consideration paid in connection with the Settlement.

25 3.9 At the Final Approval Hearing, Class Counsel may also request entry of an Order
26 approving the Class Counsel Award and the Service Awards to the Plaintiffs, which shall be paid
27 exclusively from the Total Settlement Amount and in accordance with the distribution plan described
28 in Section V. In no event shall any Released Party otherwise be obligated to pay for any attorneys'

1 fees and expenses or any Service Award. The disposition of Class Counsel's application for a Class
2 Counsel Award, and for the Service Award, is within the sound discretion of the Court and is not a
3 material term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that
4 such application be granted. Any disapproval or modification of such application by the Court shall
5 not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the
6 right to terminate the Settlement Agreement, or (iii) increase the consideration Defendant or any
7 Released Party pays in connection with the Settlement. Released Parties shall have no liability to
8 Class Counsel arising from any claim regarding the division of the Class Counsel Award between and
9 among Class Counsel or any other counsel representing Plaintiffs or the Settlement Class Members.

10 3.10 Within 10 days after entry of Judgment, Class Counsel will provide a copy of the
11 Judgment to the LWDA.

12 3.11 In no event shall Defendant or any Released Party be obligated to pay Settlement
13 Administrator Expenses beyond those provided for in this Agreement.

14 **IV. SETTLEMENT CONSIDERATION**

15 4.1 The total consideration for the Settlement from Defendant is the Total Settlement
16 Amount (\$10,500,000). The Total Settlement Amount is an "all in" number that includes, without
17 limitation, all monetary benefits and payments to the Settlement Class, Service Awards, Class Counsel
18 Award, Settlement Administrator Expenses, the PAGA Payment, and all claims for interest, fees, and
19 costs. Under no circumstances shall Defendant be required to pay anything more than the Total
20 Settlement Amount. In no event shall Defendant be liable for making any payments under this
21 Settlement, or for providing any relief to PAGA Members and Settlement Class Members, before the
22 deadlines set forth in this Agreement.

23 4.2 The Total Settlement Amount was calculated with, and is premised on, the
24 understanding that there are approximately 8,750 Class Members eligible to participate in the
25 Settlement. If the number of Class Members stated in this paragraph increases by more than 7% of
26 this estimate, then the Total Settlement Amount will be increased by the same proportion above 7%.

27 4.3 Plaintiffs and all PAGA Members/Settlement Class Members who receive any
28 Individual Settlement Payment and/or Service Award from the Total Settlement Amount expressly

1 acknowledge that their employment status is disputed and as a result such payments shall be
2 considered 50% special and general damages, and 50% penalties, the entire amount for which an IRS
3 Form 1099 will be issued, if required. Plaintiffs and all PAGA Members/Settlement Class Members
4 who receive a payment of any kind from the Total Settlement Amount agree to timely pay in full all
5 of the federal, state, and municipal income taxes owed on such payments.

6 4.4 The terms of this Agreement relating to the Service Awards and Class Counsel Award
7 were not negotiated by the Parties before full agreement was reached as to all other material terms of
8 the proposed Settlement, including, but not limited to, any terms relating to the relief to the Settlement
9 Class. Defendant agrees not to oppose a request for the Service Awards for Plaintiffs, as awarded by
10 the Court, up to a maximum of \$15,000 each. Plaintiffs and Class Counsel agree not to seek any
11 Service Award in excess of the above amount.

12 4.5 Class Counsel agrees not to seek an award from the Court in excess of forty percent
13 (40%) of the Total Settlement Amount in attorneys' fees nor in excess of \$225,000 in costs and
14 expenses. Defendant agrees not to oppose a request for attorneys' fees, costs and expenses so long as
15 it does not exceed the amounts set forth above. Any amount awarded as the Class Counsel Award
16 shall be inclusive of any and all amounts due to or claimed by any and all counsel representing
17 Plaintiffs. Released Parties and Settlement Class Members shall have no obligation regarding, or
18 liability for, allocation or payment of the Class Counsel Award. Class Counsel shall file any request
19 for attorneys' fees, costs and expenses and any request for Service Awards no later than 16 court days
20 before the Final Approval Hearing.

21 4.6 The Settlement Administrator shall wire each Class Counsel their respective share of
22 the Class Counsel Award from the Total Settlement Amount. Class Counsel shall provide the
23 Settlement Administrator notice of receipt of the Class Counsel Award. Released Parties shall have
24 no liability to Class Counsel or any other counsel for Plaintiffs or any Settlement Class Member arising
25 from any claim regarding the division of the Class Counsel Award.

26 **V. FUNDING AND ALLOCATION OF THE SETTLEMENT**

27 5.1 Within ten (10) calendar days of the Effective Date, Defendant shall provide the Total
28 Settlement Amount to the Settlement Administrator. Subject to Court approval, the Total Settlement

1 Amount shall be allocated to pay the Settlement Administrator Expenses; Plaintiffs' Service Awards;
2 the Class Counsel Award; seventy-five percent (75%) of the PAGA Payment to the LWDA; and all
3 remaining funds allocated to the Individual Settlement Payments to PAGA Members and Settlement
4 Class Members who did not opt out.

5 5.2 To receive a payment from the Net Settlement Amount, a Settlement Class Member
6 must not have submitted a request for exclusion from the Settlement. Settlement Class Members are
7 not eligible to receive any compensation from the Settlement other than the Individual Settlement
8 Payment(s).

9 5.3 The amount of each Settlement Class Member's share of the Net Settlement Amount
10 will be calculated in direct proportion to SCI's best estimate of each Settlement Class Member's
11 Active Settlement Periods, as determined from the Class Information provided to the Settlement
12 Administrator by Defendant, and according to the following formula: Share of Net Settlement Amount
13 = Settlement Class Member's Total Active Settlement Periods ÷ All Settlement Class Members' Total
14 Active Settlement Periods × Net Settlement Amount. The entire Net Settlement Amount will be
15 disbursed to all Settlement Class Members who do not opt out of the Settlement Class. Class Counsel
16 will be permitted to review and approve the calculation of settlement funds to be distributed, pursuant
17 to the restrictions in Paragraph 5.4. All Settlement Class Members who do not opt out will receive a
18 payment from the Net Settlement Amount, and without the need to submit claims for payment.

19 5.4 The amount of each PAGA Member's share of the PAGA Fund will be calculated in
20 direct proportion to SCI's best estimate of each PAGA Member's Active Settlement Periods during
21 the PAGA Period, as determined from the Class Information provided to the Settlement Administrator
22 by Defendant, and according to the following formula: Share of PAGA Fund = PAGA Member's Total
23 Active Settlement Periods during PAGA Period ÷ All PAGA Members' Total Active Settlement
24 Periods during the PAGA Period × PAGA Fund (\$50,000). Class Counsel will be permitted to review
25 and approve the calculation of settlement funds to be distributed, pursuant to the restrictions in
26 Paragraph 5.4. All PAGA Members will receive a payment from the PAGA Fund (regardless whether
27 they opt out of the Settlement Class), and without the need to submit claims for payment.
28

1 5.5 The Settlement Administrator may provide Class Counsel with a version of the Class
2 List that includes solely a unique identifying number for each individual and their pay periods worked,
3 but not contain any Settlement Class Member's name, social security number, nor last known address
4 nor any other identifying information. In the event a dispute arises with respect to any Settlement
5 Class Member's data in connection with administration of the Settlement, the Settlement
6 Administrator is authorized to provide Class Counsel with the name, social security and last known
7 contact information of the Settlement Class Member who is the subject of the dispute.

8 5.6 In the event that any checks mailed to PAGA Members and Settlement Class Members
9 remain uncashed after the Void Date, then any such funds shall be transmitted by the Settlement
10 Administrator pursuant to governing California law to the State of California Unclaimed Property
11 Fund, to be held there in the name of and for the benefit of such class members under California's
12 escheatment laws.

13 5.7 At no point shall any amount from the Total Settlement Amount revert back to
14 Defendant.

15 5.8 The Settlement Administrator shall issue the Individual Settlement Payments from the
16 Total Settlement Amount to each PAGA Member and Settlement Class Member who does not opt out.
17 Each Individual Settlement Payment shall be considered 50% special and general damages, and 50%
18 penalties, and the entire amount shall be reported by the Settlement Administrator to the applicable
19 governmental authorities on IRS Form 1099s, if required. The portions allocated to Plaintiffs' Service
20 Awards shall also be reported on IRS Form 1099s. The Settlement Administrator shall be responsible
21 for issuing respective copies of IRS Form 1099s for the Plaintiffs and Settlement Class Members who
22 received and cashed their respective Individual Settlement Payments.

23 **VI. CLASS NOTICE PROCEDURES**

24 6.1 No more than seven (7) business days after entry of the Preliminary Approval Order,
25 Defendant shall provide the Settlement Administrator with the Class Information for purposes of
26 sending the Class Notice to Settlement Class Members.

27 6.2 The Class Notice will include a statement to each Settlement Class Member containing
28 their Active Settlement Periods during the PAGA Period and Settlement Class Period being used to

1 calculate the amount of their Settlement Payment as described in Paragraph 5.3, and inform Settlement
2 Class Members of their right to request exclusion from the Settlement, of their right to object to the
3 Settlement, of their right to dispute the information upon which their share of the Settlement will be
4 calculated, and the claims to be released.

5 6.3 As set forth in the Class Notice, Settlement Class Members will be provided forty-five
6 (45) days after mailing of the Class Notice and accompanying statement to disagree with SCI's
7 calculation of their total Active Settlement Periods by providing documentation to the Settlement
8 Administrator. The Settlement Administrator shall review any documentation submitted by a
9 Settlement Class Member and consult with the Parties to determine whether an adjustment is
10 warranted. There will be a presumption that SCI's records are correct, absent evidence produced by
11 a Settlement Class Member to the contrary. The Settlement Administrator's determination of the
12 amount of any PAGA Member's/Settlement Class Member's Active Settlement Periods shall be
13 binding upon the PAGA Member/Settlement Class Member and the Parties, and a PAGA
14 Member's/Settlement Class Member's Individual Settlement Payment will be calculated according to
15 the Settlement Administrator's determination.

16 6.4 No more than fourteen (14) days after entry of the Preliminary Approval Order,
17 provided Defendant timely complied with its obligation in Paragraph 6.1, the Settlement Administrator
18 shall send a copy of the Class Notice by U.S. mail to each potential Settlement Class Member (the
19 Notice Date).

20 6.5 If any Class Notice sent via U.S. mail to any potential Settlement Class Member is
21 returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall
22 forward the postal mailing to that address. If the Settlement Administrator is not provided a
23 forwarding address, the Settlement Administrator shall make a good-faith search of an appropriate
24 database, as described in Paragraph 6.6, and postal mailings shall be resent, re-mailed, and/or
25 forwarded to any new postal mail address obtained through the methods described in Paragraph 6.6.
26 In the event that any Class Notice is returned as undeliverable a second time, no further efforts shall
27 be required. The Settlement Administrator shall maintain a log detailing the instances Class Notices
28 are returned as undeliverable.

1 6.6 Before any mailing to an address besides that listed in the Class Information, the
2 Settlement Administrator shall make a good-faith attempt to obtain the most-current names and postal
3 mail addresses for all potential Settlement Class Members to receive such postal mail, including (1)
4 cross-checking the names and/or postal mail addresses it received from SCI, (2) reviewing the
5 addresses with the National Change of Address Database and (3) performing further reasonable
6 searches (e.g., through Lexis/Nexis) for more-current names and/or postal mail addresses for
7 Settlement Class Members. All Settlement Class Members' names and postal mail addresses obtained
8 through these sources shall be protected as confidential and not used for purposes other than the notice
9 and administration of this Settlement, for the reasons set forth in Paragraph 3.3. The address
10 determined by the Settlement Administrator as the current mailing address through this process shall
11 be presumed to be the best mailing address for the applicable Settlement Class Member.

12 6.7 The Parties agree that the procedures set forth in this Section constitute reasonable and
13 the best practicable notice under the circumstances and an appropriate and sufficient effort to locate
14 current addresses for Settlement Class Members such that no additional efforts to do so shall be
15 required.

16 6.8 At least twenty-one (21) days before the Final Approval Hearing, the Settlement
17 Administrator shall prepare a declaration of due diligence and proof of dissemination with regard to
18 the mailing of the Class Notice, and any attempts by the Settlement Administrator to locate Settlement
19 Class Members, its receipt of valid requests for exclusion, and its inability to deliver the Class Notice
20 to Settlement Class Members due to invalid addresses ("Due Diligence Declaration"), to Class
21 Counsel and counsel for Defendant for presentation to the Court. Class Counsel shall be responsible
22 for filing the Due Diligence Declaration with the Court.

23 6.9 If any individual whose name does not appear in the Class Information that SCI
24 provides the Settlement Administrator (and who has not previously opted out of the Settlement Class),
25 believes that they are a Settlement Class Member, they shall have the opportunity to dispute their
26 exclusion from the Settlement Class, prior Final Approval. If an individual believes they are a
27 Settlement Class Member, they must notify the Settlement Administrator within a reasonable amount
28 of time after the Notice Date, but under no circumstances after Final Approval. The Parties will meet

1 and confer regarding any such individuals in an attempt to reach an agreement as to whether any such
2 individual should be regarded as a Settlement Class Member. If the Parties so agree, the Settlement
3 Administrator will provide a Class Notice to the individual, and treat the individual as a Settlement
4 Class Member for all other purposes. Such an individual will have all of the same rights as any other
5 Settlement Class Member under this Agreement.

6 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

7 7.1 Settlement Class Members (with the exception of Plaintiffs) may opt out of the
8 Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement Class must
9 submit timely, written requests for exclusion. To be effective, such a request must include the
10 Settlement Class Member’s name, address, and telephone number; a clear and unequivocal statement
11 that the Settlement Class Member wishes to be excluded from the Settlement Class; and the signature
12 of the Settlement Class Member. The request must be mailed to the Settlement Administrator at the
13 address provided in the Class Notice and must be postmarked no later than the Exclusion/Written
14 Objection Deadline. The date of the postmark shall be the exclusive means used to determine whether
15 a request for exclusion has been timely submitted. Requests for exclusion must be exercised
16 individually by the Settlement Class Member. Attempted collective group, class, or subclass requests
17 for exclusions shall be ineffective and disregarded by the Settlement Administrator.

18 7.2 The Settlement Administrator shall promptly log each request for exclusion that it
19 receives and provide copies of the log and all such requests for exclusion to Class Counsel and counsel
20 for Defendant, as requested.

21 7.3 The Settlement Administrator shall prepare a list of all persons who timely and properly
22 requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the Final Approval
23 Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

24 7.4 All Settlement Class Members who are not included in the Opt-Out List approved by
25 the Court shall be bound by this Agreement, and will release the Settlement Class Members’ Released
26 Claims, even if they never received actual notice of the Action or this proposed Settlement.
27
28

1 7.5 The Settlement Administrator, in its sole discretion, shall determine whether a request
2 for exclusion was timely and properly submitted. The Settlement Administrator's decision shall be
3 final, binding, and nonappealable.

4 7.6 Plaintiffs agree not to request exclusion from the Settlement Class.

5 7.7 Settlement Class Members may object to or opt out of the Settlement, but may not do
6 both. Any Settlement Class Member who submits a timely and proper request for exclusion may not
7 file an objection to the Settlement or receive an Individual Settlement Payment, and shall be deemed
8 to have waived any rights or benefits under the Settlement Agreement. If a Settlement Class Member
9 files both an objection and a valid and timely request for exclusion, the request for exclusion will
10 override the objection, and the objection shall therefore be ignored.

11 7.8 Notwithstanding the submission of a timely request for exclusion, PAGA Members
12 will still be bound by the settlement and release of the PAGA Claims or remedies under the Final
13 Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do not
14 apply to the PAGA Claims, and will not be effective to preclude the release of the PAGA Claims.

15 **VIII. PROCEDURES FOR OBJECTIONS**

16 8.1 Any Settlement Class Member that wishes to object to the fairness, reasonableness, or
17 adequacy of this Agreement or the proposed Settlement must (1) provide to the Settlement
18 Administrator (who shall forward it to Class Counsel and counsel for Defendant), a timely statement
19 of the objection, as set forth below, or (2) appear in person at the Final Approval Hearing to make an
20 objection.

21 8.2 To be timely, a written objection must be mailed to the Settlement Administrator, and
22 postmarked no later than the Exclusion/Written Objection Deadline. The date of the postmark on the
23 return-mailing envelope shall be the exclusive means used to determine whether objection has been
24 timely submitted.

25 8.3 A written objection must contain at least the following: (i) the objector's full name,
26 address, telephone, and signature; (ii) a clear reference to the Action; (iii) a statement of the specific
27 legal and factual basis for each objection argument; and (iv) a statement whether the objecting person
28 or entity intends to appear at the Final Approval Hearing, either in person or through counsel and, if

1 through counsel, a statement identifying that counsel by name, bar number, address, and telephone
2 number. All objections shall be signed by the objecting Settlement Class Member, even if the
3 Settlement Class Member is represented by counsel.

4 8.4 The right to object to the proposed Settlement must be exercised individually by a
5 Settlement Class Member. Attempted collective, group, class, or subclass objections shall be
6 ineffective and disregarded.

7 8.5 Any Settlement Class Member who does not file a timely written objection in
8 accordance with this Section shall maintain the right to voice any objections at the Final Approval
9 Hearing. Any Settlement Class Member who does not file a timely written objection in accordance
10 with this Section, nor objects at the Final Approval Hearing shall be forever barred from making any
11 objection to the proposed Settlement, the Plan of Allocation, the Class Counsel Award and the Service
12 Award. Settlement Class Members who object to the proposed Settlement shall remain Settlement
13 Class Members, and shall be deemed to have voluntarily waived their right to pursue an independent
14 remedy against Defendant and the Released Parties.

15 8.6 To the extent any Settlement Class Member objects to the proposed Settlement, and
16 such objection is overruled in whole or in part, such Settlement Class Member will be forever bound
17 by the Final Approval order and Judgment.

18 8.7 It shall be Class Counsel's sole responsibility to respond to any objections made with
19 respect to any application for the Class Counsel Award and Service Award.

20 **IX. RELEASES**

21 9.1 The Released Claims against each and all of the Released Parties shall be released
22 (without an award of costs to any party other than as provided in this Agreement) upon the date
23 Defendant funds the entire Total Settlement Amount ("Funding Date").

24 9.2 As of the Funding Date, Plaintiffs, and all Settlement Class Members who have not
25 been excluded from the Settlement Class as provided in the Opt-Out List, individually and on behalf
26 of their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators,
27 representatives, agents, successors, and assigns, and anyone claiming through them or acting or
28 purporting to act on their behalf, agree to forever release, discharge, hold harmless, and covenant not

1 to sue each and all of the Released Parties from each and all of the Named Plaintiffs' General Released
2 Claims (in the case of the Plaintiffs) and the Settlement Class Members' Released Claims (in the case
3 of the Settlement Class Members who have not been excluded from the Settlement Class as provided
4 in the Opt-Out List), and by operation of the Final Judgment shall have fully and finally released,
5 relinquished, and discharged all such claims against each and all of the Released Parties; and they
6 further agree that they shall not now or hereafter initiate, maintain, or assert any Named Plaintiffs'
7 General Released Claims (in the case of Plaintiffs) and any Settlement Class Members' Released
8 Claims (in the case of the Settlement Class Members who have not been excluded from the Settlement
9 Class as provided in the Opt-Out List), against the Released Parties in any other court action or before
10 any administrative body, tribunal, arbitration panel, or other adjudicating body. Without in any way
11 limiting the scope of the releases described in Paragraphs 2.15, 2.25, and 2.32, as well as the remainder
12 of this Section, this release covers, without limitation, any and all claims for attorneys' fees, costs or
13 disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement
14 Class Members, or by Plaintiffs or Settlement Class Members, or any of them, in connection with or
15 related in any manner to the Action, the Settlement of the Action, the administration of such
16 Settlement, and/or the Released Claims, except to the extent otherwise specified in the Agreement.

17 9.3 Plaintiffs expressly acknowledge that they are familiar with principles of law such as
18 Section 1542 of the California Civil Code, which provides:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
20 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
21 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
22 **RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**
23 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
24 **DEBTOR OR RELEASED PARTY.**

25 9.4 With respect to the Named Plaintiffs' General Released Claims, as described in
26 Paragraph 2.15, Plaintiffs shall be deemed to have expressly, knowingly, and voluntarily waived and
27 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may
28 otherwise have had pursuant to Section 1542 of the California Civil Code and all similar federal or
state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable herein. In
connection with the release, Plaintiffs acknowledge that they are aware that they may hereafter

1 discover claims presently unknown and unsuspected or facts in addition to or different from those
2 which they now know or believe to be true with respect to matters released herein. Nevertheless,
3 Plaintiffs acknowledge that a portion of the consideration received herein is for a release with respect
4 to unknown damages and complaints, whether resulting from known injuries and consequences or
5 from unknown injuries or unknown consequences of known or unknown injuries, and state that it is
6 the intention of Plaintiffs in agreeing to this release to fully, finally, and forever to settle and release
7 all matters and all claims that exist, hereafter may exist, or might have existed (whether or not
8 previously or currently asserted in any action), constituting Named Plaintiffs' General Released
9 Claims.

10 9.5 Plaintiffs further acknowledge, agree, and understand that: (i) each has read and
11 understands the terms of this Agreement; (ii) each has been advised in writing to consult with an
12 attorney before executing this Agreement; and (iii) each has obtained and considered such legal
13 counsel as they deem necessary.

14 9.6 Subject to Court approval, the Plaintiffs, and all Settlement Class Members to the extent
15 they have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be bound
16 by this Settlement Agreement, and all of their claims shall be released, even if they never received
17 actual notice of the Action or this Settlement.

18 **X. ADMINISTRATION OF THE SETTLEMENT FUND**

19 10.1 The Settlement Administrator or its authorized agents in consultation with the Parties
20 and subject to the supervision, direction, and approval of the Court, shall calculate the allocation of
21 and oversee the distribution of the Total Settlement Amount.

22 10.2 The Total Settlement Amount shall be applied as follows:

23 10.2.1 To pay the total costs, expenses, and fees of the Settlement Administrator
24 incurred in connection with providing Class Notice to potential Settlement Class Members, and the
25 management and distribution of the Total Settlement Amount to PAGA Members and Settlement Class
26 Members, not to exceed \$40,000;

10.2.2 Subject to the approval and further order(s) of the Court, to pay Plaintiffs' Service Awards based on contributions and time expended assisting in the litigation, up to a maximum of \$15,000 each for Thomas Lewis, Aurelio Sanchez, and Eliseo Leal;

10.2.3 Subject to the approval and further order(s) of the Court, to pay the Class Counsel Award (up to, but not to exceed, 40% of the Total Settlement Amount (\$10,500,000) and reimbursement of litigation costs not to exceed \$225,000 as ordered by the Court;

10.2.4 Subject to the approval and further order(s) of the Court, to distribute 75% of the PAGA Payment to the LWDA and 25% of the PAGA Payment to PAGA Members as part of each PAGA Member's Individual Settlement Payment(s), with the amount to be distributed to each PAGA Member determined proportionately to their Individual Settlement Payment(s);

10.2.5 After the Effective Date and subject to the approval and further order(s) of the Court, to distribute the Individual Settlement Payments from the Total Settlement Amount for the benefit of the Settlement Class pursuant to Settlement Agreement, or as otherwise ordered by the Court.

10.3 Within sixty (60) days of the Effective Date, the Class Counsel Award (Four Million Two Hundred Thousand Dollars (\$4,200,000)), the entirety of Class Counsel's litigation costs as approved by the Court, and the Service Awards approved by the Court (up to Fifteen Thousand Dollars (\$15,000) each for Thomas Lewis, Aurelio Sanchez, and Eliseo Leal), and the Settlement Administrator Expenses (up to \$40,000), shall be made by the Settlement Administrator from the amount provided to it by Defendant.

10.4 The Settlement Administrator shall use reasonable efforts to disburse the Individual Settlement Payments to Settlement Class Members who did not timely opt out, pursuant to the Plan of Allocation.

10.5 If any portion of the Total Settlement Amount is not successfully distributed to PAGA Members and Settlement Class Members (*i.e.* checks are not cashed or checks are returned as undeliverable), then after the Void Date, the Settlement Administrator shall void the check and shall direct such unclaimed funds pursuant to governing California law to the State of California Unclaimed

1 Property Fund, to be held there in the name of and for the benefit of such class members under
2 California's escheatment laws.

3 10.6 Settlement Class Members who are not on the Opt-Out List approved by the Court shall
4 be subject to and bound by the provisions of the Settlement Agreement, the releases contained herein,
5 and the Judgment with respect to all Settlement Class Members' Released Claims.

6 10.7 Payment from the Total Settlement Amount made pursuant to and in the manner set
7 forth herein shall be deemed conclusive of compliance with this Settlement Agreement as to all PAGA
8 Members and Settlement Class Members.

9 10.8 No PAGA Member/Settlement Class Member shall have any claim against the
10 Plaintiffs, Class Counsel, or the Settlement Administrator based on distributions made substantially in
11 accordance with this Settlement Agreement and/or orders of the Court. No PAGA Member/Settlement
12 Class Member shall have any claim against any Released Party or its counsel relating to distributions
13 made under this Settlement.

14 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
15 **SETTLEMENT AGREEMENT**

16 11.1 If the Court does not approve the Settlement as set forth in this Settlement Agreement,
17 or does not enter the Final Approval order and Judgment on the terms described herein, or if the Court
18 enters the Judgment and appellate review is sought, and on such review, the entry of Judgment is
19 vacated, modified in any way, or reversed, or if the Final Approval order does not otherwise become
20 Final, then this Settlement Agreement shall be cancelled and terminated, unless all Parties, in their
21 sole discretion no later than thirty (30) days from the date such ruling becomes Final, provide written
22 notice to all other Parties hereto of their intent to proceed with the Settlement under the terms of the
23 Judgment as it may be modified by the Court or any appellate court.

24 11.2 No later than ten (10) business days after the Exclusion/Written Objection Deadline,
25 the Settlement Administrator shall provide to counsel for Defendant the Opt-Out List together with
26 copies of the opt-out requests. Notwithstanding any other provision of this Settlement Agreement, if
27 more than seven percent (7%) of Settlement Class Members exercise their right to opt out of the
28 Settlement, Defendant at its sole and absolute discretion may elect to rescind and revoke the entire

1 Settlement Agreement by sending written notice that it revokes the Settlement pursuant to this
2 paragraph to Class Counsel within ten (10) business days following receipt of the Opt-Out List. If
3 Defendant exercises its right of revocation, it will be responsible for all Settlement Administrator
4 Expenses incurred to the date of revocation. In the event that: (i) the Settlement is not approved, is
5 overturned, or is modified by the Court or on appeal, (ii) the Judgment does not become Final, or (iii)
6 this Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, then:
7 (a) the Parties stipulate and agree the Settlement, this Agreement, the Class Information, the Opt-Out
8 List, and all documents exchanged and filed in connection with the Settlement shall be treated as
9 privileged mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b) the Settlement shall
10 be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective
11 or enforceable, with the exception of this paragraph, which shall remain effective and enforceable; (c)
12 the parties shall be deemed to have reverted *nunc pro tunc* to their respective status prior to execution
13 of this Agreement, including with respect to any Court-imposed deadlines; (d) all Orders entered in
14 connection with the Settlement, including the certification of the Settlement Class, shall be vacated
15 without prejudice to any party's position on any issue, in the Action or any other action, and the parties
16 shall be restored to their litigation positions existing on the date of execution of this Agreement; and
17 (e) the parties shall proceed in all respects as if the Settlement Agreement and related documentation
18 and orders had not been executed, and without prejudice in any way from the negotiation or fact of
19 the Settlement or the terms of the Settlement Agreement. The Settlement Agreement, the Settlement,
20 all documents, orders, and evidence relating to the Settlement, the fact of their existence, any of their
21 terms, any press release or other statement or report by the Parties or by others concerning the
22 Settlement Agreement, the Settlement, their existence, or their terms, any negotiations, proceedings,
23 acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or
24 the Settlement shall not be admissible in any proceeding, and shall not be offered, received, or
25 construed as evidence of a presumption, concession, or an admission of liability, of the certifiability
26 of a litigation class, or of any misrepresentation or omission in any statement or written document
27 approved or made, or otherwise used by any person for any purpose whatsoever, in any trial of the
28 Action or any other action or proceedings. Plaintiffs, Class Counsel and the Settlement Administrator

1 shall return to counsel for Defendant all copies of Class Information and Opt-Out Lists and shall not
2 use or disclose the Class Information or Opt-Out List for any purpose or in any proceeding.

3 11.3 Defendant does not agree or consent to certification of the Settlement Class for any
4 purpose other than to effectuate the Settlement of the Action. Further, Defendant does not agree or
5 consent that the Action could properly be maintained as a PAGA representative action for any purpose
6 other than to effectuate the Settlement of the Action. If this Settlement Agreement is terminated
7 pursuant to its terms, or the Effective Date for any reason does not occur, all Orders certifying the
8 Settlement Class or establishing the Action as a PAGA representative action only for purposes of
9 effecting this Settlement Agreement, and all preliminary and/or final findings regarding the Settlement
10 Class certification order, shall be automatically vacated upon notice to the Court, the Action shall
11 proceed as to the original class certified on January 18, 2019, and the Action shall revert nunc pro tunc
12 to the procedural status quo as of the date and time immediately before the execution of the Settlement
13 Agreement, in accordance with this Settlement Agreement.

14 **XII. ADDITIONAL PROVISIONS**

15 12.1 All of the Exhibits to this Agreement are an integral part of the Settlement and are
16 incorporated by reference as though fully set forth herein.

17 12.2 “Plaintiffs and Class Counsel acknowledge that an adequate factual record has been
18 established that supports the Settlement, and for settlement purposes only, hereby waive their right to
19 conduct further discovery except as ordered by the Court.

20 12.3 Unless otherwise noted, all references to “days” in this Agreement shall be to calendar
21 days. In the event any date or deadline set forth in this Agreement falls on a weekend or California
22 court legal holiday, such date or deadline shall be on the first business day thereafter.

23 12.4 This Agreement constitutes the full and complete agreement of the Parties hereto, and
24 supersedes all prior negotiations and agreements, whether oral, written or otherwise, and may be
25 amended or modified only by a written instrument signed by counsel for all Parties or the Parties’
26 successors-in-interest.

1 12.5 The Parties reserve the right, subject to the Court's approval, to make any reasonable
2 extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such
3 extensions must be in writing to be enforceable.

4 12.6 The Settlement Agreement, the Settlement, the fact of the Settlement's existence, any
5 of terms of the Settlement Agreement, any press release or other statement or report by the Parties or
6 by others concerning the Settlement Agreement or the Settlement, and any negotiations, proceedings,
7 acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or
8 the Settlement may not be used as evidence of any waiver of, unenforceability of, or as a defense to
9 any OnTrac or SCI arbitration agreement.

10 12.7 The Released Parties shall have the right to file the Settlement Agreement, the Final
11 Approval order and Judgment, and any other documents or evidence relating to the Settlement in any
12 action that may be brought against them in order to support a defense or counterclaim based on
13 principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction,
14 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15 12.8 The Parties to the Settlement Agreement agree that the Total Settlement Amount and
16 the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties,
17 resulted from an arm's-length mediation session facilitated by Mark Rudy, Esq., and subsequent
18 discussions between the Parties, and reflect a settlement that was reached voluntarily based upon
19 adequate information and sufficient discovery and after consultation with experienced legal counsel.

20 12.9 Plaintiffs and Class Counsel have concluded that the Settlement set forth herein
21 constitutes a fair, reasonable, and adequate resolution of the claims that Plaintiffs asserted against
22 defendant, including the claims on behalf of the Settlement Class, and that it promotes the best interests
23 of the Settlement Class.

24 12.10 To the extent permitted by law, all agreements made and orders entered during the
25 course of the Action relating to the confidentiality of information shall survive this Settlement
26 Agreement.

27 12.11 The waiver by one Party of any breach of this Settlement Agreement by any other Party
28 shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

1 12.12 This Settlement Agreement constitutes the entire agreement among the Parties, and no
2 representations, warranties, or inducements have been made to any Party concerning this Settlement
3 Agreement, other than the representations, warranties, and covenants contained and memorialized in
4 this Settlement Agreement. In the event that the Addendum and therefore the Exhibits are never
5 finalized, the Parties will not be relieved in any way of their duties, obligations, and burden under the
6 Settlement Agreement. The Settlement Agreement shall bind the Parties upon execution, regardless
7 of whether the Addendum has also been executed.

8 12.13 This Settlement Agreement may be executed in one or more counterparts. All executed
9 counterparts and copies thereof shall be deemed to be one and the same instrument.

10 12.14 The Parties hereto and their respective counsel agree that they will use their best efforts
11 to obtain all necessary approvals of the Court required by this Settlement Agreement.

12 12.15 This Settlement Agreement shall be binding upon and shall inure to the benefit of the
13 successors and assigns of the Parties hereto, including any and all Released Parties and any
14 corporation, partnership, or other entity into or with which any Released Party hereto may merge,
15 consolidate, or reorganize.

16 12.16 This Settlement Agreement shall not be construed more strictly against one Party than
17 another merely because of the fact that it may have been prepared by counsel for one of the Parties, it
18 being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement,
19 all Parties hereto have contributed substantially and materially to the preparation of the Settlement
20 Agreement.

21 12.17 Except where this Settlement Agreement itself provides otherwise, all terms,
22 conditions, and Exhibits are material and necessary to this Settlement Agreement and have been relied
23 upon by the Parties in entering into this Settlement Agreement.

24 12.18 This Settlement Agreement shall be governed by California law. Any action based on
25 this Settlement Agreement, or to enforce any of its terms, shall be venued in Los Angeles Superior
26 Court, which shall retain jurisdiction over all such disputes. All Parties to this Settlement Agreement
27 shall be subject to the jurisdiction of Los Angeles County Superior Court for all purposes related to
28 this Settlement Agreement. This paragraph relates solely to the law governing this Settlement

1 Agreement and any action based thereon, and nothing in this paragraph shall be construed as an
2 admission or finding that California law applies to the Released Claims of any Plaintiff or Settlement
3 Class Members who reside outside of the state.

4 12.19 The Court shall retain continuing and exclusive jurisdiction over the Parties to this
5 Settlement Agreement for the purpose of the administration and enforcement of this Settlement
6 Agreement.

7 12.20 The headings used in this Settlement Agreement are for the convenience of the reader
8 only, and shall not affect the meaning or interpretation of this Settlement Agreement.

9 12.21 In construing this Settlement Agreement, the use of the singular includes the plural
10 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

11 12.22 Each Party to this Settlement Agreement warrants that he, she, they, or it is acting upon
12 independent judgment and upon the advice of counsel, and not in reliance upon any warranty or
13 representation, express or implied, of any nature of any kind by any other Party, other than the
14 warranties and representations expressly made in this Settlement Agreement.

15 12.23 Each counsel signing this Settlement Agreement on behalf of their clients who are
16 unable to sign the Agreement on the date that it is executed by other Parties represents that such
17 counsel is fully authorized to sign this Settlement Agreement on behalf of their clients; provided,
18 however, that all Parties who have not executed this Agreement on the date that it is executed by the
19 other Parties shall promptly thereafter execute this Agreement and in any event no later than one (1)
20 week after the Agreement has been executed by counsel.

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24 **[SIGNATURES ON FOLLOWING PAGE]**
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Dated: 4/28/2021, 2021

DocuSigned by:

By: E4111048E043431
THOMAS LEWIS
PLAINTIFF

Dated: _____, 2021

By: _____
AURELIO SANCHEZ
PLAINTIFF

Dated: _____, 2021


By: _____
ELISEO LEAL
PLAINTIFF

Dated: _____, 2021

By: _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR EXPRESS MESSENGER
SYSTEMS, INC. DBA ONTRAC
DEFENDANT

Dated: April 29, 2021


By: _____
STANLEY D. SALTZMAN
STEPHEN P. O'DELL
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
ELISEO LEAL

Dated: _____, 2021

By: _____
JAMES R. HAWKINS
GREGORY E. MAURO
JAMES HAWKINS, APLC
Attorneys for Plaintiff
ELISEO LEAL

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Dated: _____, 2021

By: _____
THOMAS LEWIS
PLAINTIFF


Dated: _____, 2021

By: _____
AURELIO SANCHEZ
PLAINTIFF

Dated: _____, 2021

By: _____
ELISEO LEAL
PLAINTIFF

Dated: April 30, 2021

By:  _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR EXPRESS MESSENGER
SYSTEMS, INC. DBA ONTRAC
DEFENDANT

Dated: _____, 2021

By: _____
STANLEY D. SALTZMAN
STEPHEN P. O'DELL
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
ELISEO LEAL

Dated: _____, 2021

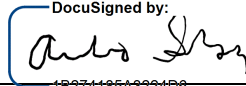
By: _____
JAMES R. HAWKINS
GREGORY E. MAURO
JAMES HAWKINS, APLC
Attorneys for Plaintiff
ELISEO LEAL

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Dated: _____, 2021

By: _____
THOMAS LEWIS
PLAINTIFF

Dated: ^{4/28/2021}_____, 2021

By: ^{DocuSigned by:}


1827412513224D8
AURELIO SANCHEZ
PLAINTIFF

Dated: _____, 2021

By: _____
ELISEO LEAL
PLAINTIFF

Dated: _____, 2021

By: _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR EXPRESS MESSENGER
SYSTEMS, INC. DBA ONTRAC
DEFENDANT

Dated: _____, 2021

By: _____
STANLEY D. SALTZMAN
STEPHEN P. O'DELL
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
ELISEO LEAL

Dated: _____, 2021

By: _____
JAMES R. HAWKINS
GREGORY E. MAURO
JAMES HAWKINS, APLC
Attorneys for Plaintiff
ELISEO LEAL

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Dated: 4/28/2021, 2021

DocuSigned by:
Thomas Lewis
E4111048E043431
By: THOMAS LEWIS
PLAINTIFF

Dated: _____, 2021

By: _____
AURELIO SANCHEZ
PLAINTIFF

Dated: 4-30, 2021

By: Eliseo Leal
ELISEO LEAL
PLAINTIFF

Dated: _____, 2021

By: _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR EXPRESS MESSENGER
SYSTEMS, INC. DBA ONTRAC
DEFENDANT

Dated: _____, 2021


By: _____
STANLEY D. SALTZMAN
STEPHEN P. O'DELL
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
ELISEO LEAL

Dated: April 30, 2021

By: James R. Hawkins
JAMES R. HAWKINS
GREGORY E. MAURO
JAMES HAWKINS, APLC
Attorneys for Plaintiff
ELISEO LEAL

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Dated: _April 28, 2021

By: 
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR ONTRAC LOGISTICS, INC.
DBA ONTRAC
DEFENDANT

Dated: _____, 2021

By: _____
RAUL PEREZ
MELISSA GRANT
BRANDON BROUILLETTE
CAPSTONE LAW, APC
Attorneys for Plaintiff
THOMAS LEWIS and AURELIO
SANCHEZ

Dated: _____, 2021

By: _____
BASSIL A. HAMIDEH
THE HAMIDEH FIRM, P.C.
Attorneys for Plaintiffs
THOMAS LEWIS and AURELIO
SANCHEZ

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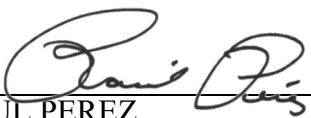
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Dated: _____, 2021

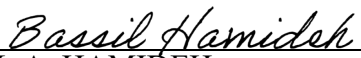
By: _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR ONTRAC LOGISTICS, INC.
DBA ONTRAC
DEFENDANT

Dated: April 28, 2021

By:  _____
RAUL PEREZ
MELISSA GRANT
BRANDON BROUILLETTE
CAPSTONE LAW, APC
Attorneys for Plaintiff
THOMAS LEWIS and AURELIO
SANCHEZ

Dated: April 28, 2021

By:  _____
BASSIL A. HAMIDEH
THE HAMIDEH FIRM, P.C.
Attorneys for Plaintiffs
THOMAS LEWIS and AURELIO
SANCHEZ

4810-9099-9525.2 / 023721-1192

Exhibit A

Express Messenger Systems Wage and Hour Cases, No. JCCP 4789
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully.

Si desea una traducción al Español de este Aviso, por favor llame al administrador al () ***-*******

To: All individuals who personally performed last-mile delivery and pickup services for OnTrac (“Defendant”) in California at any time from February 22, 2009 to [the date of Preliminary Approval] (“Class Members”), or January 31, 2013 to [the date of Preliminary Approval] (“PAGA Employees”), and who were designated as independent contractors. Excluded this group are individuals designated as Regional Service Providers during the time they were designated as Regional Service Providers.

On _____, the Honorable Kenneth R. Freeman of the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.** All checks will be negotiable for 180 days—checks that are not cashed within 180 days will be paid to the California State Controller to be deposited in the Unclaimed Property Fund in the Class Members’ name.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at ____:00 ____m. on _____, 2021 in Department 10 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, CA 90012. You are not required to attend the hearing, but if you wish to attend, the Court’s preference is that you attend the hearing telephonically (remotely), which can be set up through LA Court Connect (www.lacourt.org/lacc/). A prescheduled appointment is currently necessary to review any documents in the clerk’s office. Please see www.lacourt.org for up-to-date safety measures as they may change, and also see http://www.lacourt.org/pdf/recovery_social_distancing_all.pdf for more information about the Court’s social distancing protocols.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit [settlement website] for any scheduling changes.

Summary of the Litigation

Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal, on their behalf and on behalf of other current and former service providers, allege that Defendant violated California state labor laws as a result of its alleged failure to classify Class Members as non-exempt employees. After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. Following years of negotiations, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Marlin & Saltzman, LLP; Capstone Law APC; The Hamideh Firm, P.C.; and James Hawkins, APLC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiffs.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$10,500,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class Representative Enhancement Payments of \$15,000, each, to Thomas Lewis, Aurelio Sanchez, and Eliseo Leal for their services on behalf of the class and for general releases of all claims arising out of their relationship with Defendant; (3) \$4,200,000 in attorneys' fees and up to \$225,000 in litigation costs and expenses; (4) a \$200,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$150,000 payment to the California Labor and Workforce Development Agency ("LWDA"), and a \$50,000 payment ("PAGA Fund") to PAGA Employees, and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$_. After deducting the above payments, a total of approximately \$ ("Net Settlement Amount") will be allocated to Class Members who do not opt out of the Settlement Class. Additionally, all PAGA Employees will receive a proportional share of the \$50,000 PAGA Fund, and regardless whether they opt out of the Settlement Class.

Payments from the Net Settlement Amount. Each Class Member's share of the Net Settlement Amount will be based on the number of payments each Class Member received during the period from February 22, 2009 to the date of Preliminary Approval ("Class Period"). The formula for calculating settlement payments is as follows:

- (a) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.
- (b) Defendant will calculate the total number of periods in which a Class Member received a payment via Subcontracting Concepts, Inc. ("SCI"), based on the records and data maintained by SCI, for each Class Member from the time period between February 22, 2009 and [the date of Preliminary Approval] ("Active Settlement Periods").
- (c) Each Class Member's share of the Net Settlement Amount will be calculated according to the following formula: $\text{Class Member's Active Settlement Periods} \div \text{Entire Class' Active Settlement Periods} \times \text{Net Settlement Amount}$.

According to Defendant's records, you worked during a total of ____ Active Settlement Periods during the Class Period. Accordingly, your estimated payment is approximately \$_____.

Payments from the PAGA Fund. Each PAGA Employee's share of the PAGA Fund will be based on the number of payments each PAGA Employee received during the period from January 31, 2013 to the date of Preliminary Approval ("PAGA Period"). The formula for calculating settlement payments is as follows:

- (a) The entire PAGA Fund will be disbursed to all PAGA Employees.
- (b) Defendant will calculate the total number of periods in which a PAGA Employee received a payment via SCI, based on the records and data maintained by SCI, for each PAGA Employee from the time period between January 31, 2013 and [the date of Preliminary Approval] ("PAGA Active Settlement Periods").
- (b) Each PAGA Employee's share of the PAGA Fund will be calculated according to the following formula: $\text{PAGA Employee's PAGA Active Settlement Periods} \div \text{All PAGA Employees' PAGA Active Settlement Periods} \times \text{PAGA Fund}$.

According to Defendant's records, you worked during a total of ____ PAGA Active Settlement Periods during the PAGA Period. Accordingly, your estimated payment is approximately \$_____.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Disputes. If you believe the information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute. All disputes should be postmarked or faxed on or before [insert date of Response Deadline] to:

Settlement Administrator

c/o _____

Fax No. _____

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, the Individual Settlement Payment will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims ("Released Claims):

Settlement Class Members' Released Claims: Any and all present and past claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees, costs, or disbursements) based on or reasonably related to the conduct alleged in the operative Complaint during the Settlement Period, and specifically to claims pursuant to California Labor Code sections 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 432, 432.5, 510, 512, 551-553, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2750.3, 2753, 2800, 2802, 2698 et seq. (PAGA Claims), and 3700 et seq.; Cal. Code of Regulations, tit. 8, § 11090; California Business and Professions Code sections 17200 et seq.; and any other similar California state or federal law, for non-payment of wages, minimum wages, overtime wages (including regular rate calculations), expense reimbursement, wage statements, failure to provide workers' compensation insurance, meal periods, rest breaks, final pay, waiting time penalties, PAGA penalties, restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest ("Settlement Class Members' Released Claims"). Settlement Class Members' Released Claims do not include claims that, as a matter of law cannot be released. The Settlement Class Members' Released Claims are released from February 22, 2009 through [preliminary approval of this Settlement].

PAGA Employees' Released Claims: All claims for civil penalties pursuant to PAGA as alleged in Plaintiffs' PAGA pre-filing notice and operative Complaint, and based on all provisions of the Labor Code, Wage Orders or any other statute or regulation identified in the Action to the fullest extent permitted by law ("PAGA Employees' Released Claims"). The PAGA Employees' Released Claims are released from January 31, 2013 through [preliminary approval of this Settlement].

Option 2 – Opt Out of the Settlement

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature (even if you have counsel), address, and telephone number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The written request to be excluded must be postmarked not later than _____, 2021. If you submit a request for exclusion which is not postmarked by _____, 2021, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Amount.
- Not release the Settlement Class Members' Released Claims.
- You will, however, release the PAGA Employees' Released Claims, and will receive a payment from the PAGA Fund.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement.

Written objections must provide: (1) your full name, signature (even if you have counsel), address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

All written objections must be received by the administrator by not later than _____ 2021. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Los Angeles and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

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PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT'S ATTORNEYS WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Exhibit B

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Class Counsel

[Additional Class Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

**[AMENDED PROPOSED] ORDER
GRANTING MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 **Additional Attorneys for Plaintiffs**

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5 Los Angeles, California 90067
6 Telephone: (310) 556-9687
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8 bhamideh@hamidehfirm.com

9 Class Counsel

10 James R. Hawkins, Esq.
11 Gregory E. Mauro, Esq.
12 JAMES HAWKINS, APLC
13 9880 Research Drive, Suite 200
14 Irvine, California 92618
15 Tel: (949) 387-7200
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18 greg@jamshawkinsaplc.com

19 Class Counsel

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6. The Court preliminarily approves the Settlement Agreement, including all the terms and conditions set forth therein and the Class Settlement Amount and allocation of payments.

7. The rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement and proceed with any alleged claims they may have against Defendant, or they may object to the Settlement and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Class Action Settlement.

8. The Court approves, as to form and content, the proposed Notice of Class Action Settlement (“Notice Packet”).

9. The Court directs the mailing, by First-Class U.S. mail, of the Notice Packets to Class Members in accordance with the schedule set forth below and the other procedures described in the Settlement Agreement. The Court finds that the method selected for communicating the preliminary approval of the Settlement Agreement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby satisfies due process.

10. The Court appoints Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal as the representatives for the Settlement Class conditionally certified by this Order.

11. The Court appoints Marlin & Saltzman, LLP; Capstone Law APC; The Hamideh Firm, P.C.; and James Hawkins, APLC as Class Counsel. The Court finds that counsel have demonstrable experience litigating, certifying, and settling class actions, and will serve as adequate counsel for the Class conditionally certified by this Order.

12. The Court approves and appoints CPT Group, Inc. as the Settlement Administrator.

13. The following dates shall govern for purposes of this Settlement:

Date	Event
_____ (or not later than 7 business days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for Defendant to produce the Class Information to the Settlement Administrator.
_____ (or not later than 14 calendar days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for the Settlement Administrator to mail Notice Packets to all Class Members.

Date	Event
____ (or not later than 45 calendar days after the Settlement Administrator mails the Notice Packets, if later)	Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement.
_____	Last day for Plaintiffs to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Awards.
_____	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Awards.

14. The Court expressly reserves the right to continue or adjourn the final approval hearing without further notice to the Class Members.

IT IS SO ORDERED.

Dated: _____

Hon. Kenneth R. Freeman
Los Angeles Superior Court Judge