

EXHIBIT 1

THIRD AMENDED JOINT STIPULATION OF CLASS ACTION SETTLEMENT

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[*ADDITIONAL COUNSEL ON NEXT PAGE*]

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

MARC RIVERA and JACQUELYN) **CASE NO. 5:18-cv-01633-JGB-SHK**

HUTTO, individually and on behalf) **CLASS ACTION**

of himself and others similarly)

situated,) **THIRD AMENDED JOINT**

) **STIPULATION OF CLASS ACTION**

Plaintiffs,) **SETTLEMENT**

vs.)

) Exh A: Second Amended Complaint

) Exh B: Class Notice

WESTERN EXPRESS, INC. doing) Exh C: Change of Address Form

business as WESTERN EXPRESS) Exh D: Proposed Preliminary Approval

TRANSPORT OF CALIFORNIA,) Order

INC., a Tennessee Corporation; and) Exh E: Proposed Final Approval Order

DOES 1 through 100, inclusive,)

) Complaint filed: May 15, 2018

Defendants.) Trial date: Vacated

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**THIRD AMENDED JOINT STIPULATION OF
CLASS ACTION SETTLEMENT**

This Third Amended Joint Stipulation of Class Action Settlement (“Agreement” or “Settlement Agreement”) is made and entered into by and between MARC RIVERA (“Rivera”) and JACQUELYN HUTTO (“Hutto”, referred together as “Plaintiffs”), individually and on behalf of all others similarly situated, and WESTERN EXPRESS, INC. doing business as WESTERN EXPRESS TRANSPORT OF CALIFORNIA, INC., a Tennessee Corporation. (“Defendant”), (collectively, the “Parties”), who are subject to the terms and conditions below, and to the Court’s approval.

This Agreement is intended to replace and supersede the Second Amended Joint Stipulation of Class Action Settlement and its Exhibits filed with this Court on October 22, 2020 [Dkt. 47-2, pp. 21-175]. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing in this Settlement Agreement is an admission of liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties will be returned to their respective positions immediately prior to and as if they had never executed this Settlement Agreement as more fully set forth below.

DEFINITIONS

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

1. “Action” means the civil action pending in the United States District Court for the Central District of California, Eastern Division, titled MARC RIVERA v. WESTERN EXPRESS, INC. doing business as WESTERN EXPRESS TRANSPORT OF CALIFORNIA, INC., a Tennessee Corporation, Case No. 5:18-cv-01633-JGB-SHK.

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2. “Second Amended Class Action Complaint” means the complaint attached to this Settlement Agreement as **Exhibit A** which the Parties stipulate to filing for purposes of this settlement only, adding JACQUELINE HUTTO as a Co-Plaintiff and Class Representative in the above-captioned Action. This Second Amended Class Complaint will become the “Operative Complaint” upon Preliminary Approval of this Settlement Agreement.

3. “Class Counsel” means COHELAN KHOURY & SINGER and LEBE LAW APC, DAVID YEREMIAN & ASSOCIATES, INC. and SOMMERS SCHWARTZ, P.C.

4. “Class Counsel Fees and Costs” means Class Counsels’ attorneys’ fees, and litigation costs and expenses approved by the Court for prosecution and resolution of the Action, and all costs incurred and to be incurred in the Action, including, but not limited to, costs associated with documenting the Settlement, securing the Court’s approval of the Settlement, obtaining entry of the Judgment terminating the Action, and expenses for any experts. Class Counsel will jointly request attorneys’ fees not to exceed thirty percent (30%) of the Gross Settlement Amount, up to \$453,012.00, and litigation costs and expenses not to exceed \$20,000.00. Defendant has agreed not to oppose this request for Class Counsel Fees and Costs. Any portion of the Class Counsel Fees and Costs not awarded will remain with the Gross Settlement Amount to be distributed pursuant to the terms of this Agreement.

5. “Class Data List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator after the Court’s entry of an Order Granting Preliminary Approval of this Settlement. The Class Data List will be formatted in Microsoft Office Excel and be ready to be used by the Administrator. The Class Data List will include, to the extent available to Defendant, for each Class

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1 Member: full name; most recent mailing address and telephone number; email
2 address; social security number; dates of employment, number of Individual Work
3 Weeks worked during the Class Period, and number of Pay Periods worked during
4 the PAGA Period. Defendant agrees to work with the Settlement Administrator to
5 provide any other relevant information needed to locate and update mailing
6 addresses for Class Members.

7 6. “Class Member(s)” or “Settlement Class” means all current and
8 former employee drivers of Defendant who resided in California during the Class
9 Period, whose job duties included, among other things, driving commercial motor
10 vehicles and performing related services within the State of California, and who
11 were paid on a “piece rate” and/or rate-per-mile basis for compensation purposes.
12 There are an estimated 2,228 Class Members who worked 49,565 Work Weeks
13 during the Class Period.

14 7. “Class Period” means the period from October 26, 2016 through
15 December 31, 2020.

16 8. “Class Representative Service Payment” means the amount to be paid
17 from the Gross Settlement Amount to each named Plaintiff in exchange for a
18 general release and in recognition of each of their efforts, risks and burdens in
19 prosecuting the Action on behalf of Class Members, and for the benefits obtained
20 for them. Plaintiffs will request, and Defendant will not oppose, Plaintiffs’
21 application to the Court for Service Payments of up to \$10,000 to Plaintiff Marc
22 Riviera and up to \$10,000 to Plaintiff Jacqueline Hutto. Any portion of the Class
23 Representative Service Payments not awarded to Plaintiffs will remain with the
24 Gross Settlement Amount for distribution pursuant to the terms of the Settlement.

25 9. “Court” means the United States District Court, Central District of
26 California – Eastern Division or any other court taking jurisdiction of the Action.

27 10. “Effective Date” means the date when the Final Approval Order
28 becomes final. For purposes of this Paragraph, the Final Approval Order “becomes

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1 final” upon the last to occur of the following: (a) if there are no objections to the
2 Settlement, the date the Court enters an order granting final approval of the
3 Settlement; or (b) if there are objections to the Settlement, and if an appeal, review,
4 or writ is not sought from the Final Approval Order, the day after the time period
5 to appeal the Settlement has expired.

6 11. “Gross Settlement Amount” means the maximum settlement amount
7 of \$1,510,040.12 to be paid by Defendant in full satisfaction of all claims arising
8 from the Action, which includes all Individual Settlement Payments to
9 Participating Class Members, the Class Representative Service Payments to named
10 Plaintiffs Rivera and Hutto, Settlement Administration Expenses to CPT Group,
11 Inc., PAGA Payment, and Class Counsels’ Attorneys’ Fees and Costs. Defendant
12 will not be liable for payment of any amounts other than the Gross Settlement
13 Amount in settlement of the Action, **except for** the employer-sided payroll taxes
14 on that portion of the Individual Settlement Payments attributed to wages, which
15 Defendant will pay in addition to the Gross Settlement Amount.

16 12. “Individual Settlement Payment” means the proportionate share of the
17 Net Settlement Amount to be distributed to each Participating Class Member based
18 on the number of Work Weeks worked during the Class Period in relation to the
19 number of Work Weeks worked by all Participating Class Members during the
20 Class Period. For eligible PAGA Members, the Individual Settlement Payment
21 will include a proportionate share of the PAGA Payment allocated to PAGA
22 Members, \$12,500 (representing 25% of \$50,000 PAGA Payment) based on the
23 number of Pay Periods worked during the PAGA Period.

24 13. “Net Settlement Amount” means the sum remaining following Court-
25 approved deductions from the Gross Settlement Amount for Class Counsel Fees
26 and Costs, Class Representative Service Payments, PAGA Payment and Settlement
27 Administration Expenses. The Net Settlement Amount will be distributed entirely
28 on a proportionate basis to Participating Class Members using their number of

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1 Work Weeks worked during the Class Period and for eligible PAGA Members,
2 their number of Pay Periods worked during the PAGA Period. Following
3 deduction of the anticipated Court-approved Class Counsel Fees of \$453,012,
4 Class Counsel Litigation Costs of up to \$20,000, Class Representative Service
5 Payments of \$20,000 (\$10,000 to each named Plaintiff), Settlement Administration
6 Expenses of up to \$30,000, and PAGA Payment of \$50,000 (75% - \$37,500 to be
7 paid to LWDA, and 25% - \$12,500 to be apportioned among the PAGA Members),
8 the remaining sum, the Net Settlement Amount estimated to be **\$937,028.12**, will
9 be entirely distributed on a proportionate basis to Participating Class Members.

10 14. “Notice of Class Action Settlement” or “Class Notice”, refers to the
11 Notice of Class Action Settlement, in a form substantially similar to **Exhibit B**,
12 attached to this Agreement. The Class Notice provides information regarding the
13 nature of the Action, and the claims alleged; (2) a summary of the Settlement’s
14 principal terms, (3) the Class definition, (4) individualized information regarding
15 the number of Work Weeks worked during the Class Period, and the number of
16 Pay Periods worked during the PAGA Period; (5) the formula for calculating
17 Individual Settlement Payments and the estimated amount of their Individual
18 Settlement Payment, (6) instructions on how to submit a timely and valid Request
19 for Exclusion or Objection and the deadlines to do so, (7) instructions on how to
20 dispute the information on which their Individual Settlement Payment will be
21 calculated, and the deadline to do so, (8) the claims to be released; (9) of the date,
22 time, and place of the Final Approval Hearing; and (10) how to get additional
23 information, as well as other relevant information.

24 15. “Notice Packet” means the Court-approved Notice of Class Action
25 Settlement (attached hereto as **Exhibit B**), Change of Address form (attached
26 hereto as **Exhibit C**), and pre-printed return envelope to be mailed to all Class
27 Members pursuant to the terms of this Agreement.

28 16. “PAGA Members” are defined as all current and former hourly non-

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1 exempt drivers employed by Defendant who resided in the State of California at
2 any time during the period from April 6, 2017 to December 31, 2020 (“PAGA
3 Period”). There are an estimated 1,856 PAGA Members who have worked 29,700
4 Pay Periods during the PAGA Period. Each PAGA Member will receive a
5 proportionate share of the \$12,500 (25% of the \$50,000 PAGA Payment). Because
6 there is no right to opt out of a PAGA settlement, if a Class Member submits a
7 valid and timely request for exclusion from the Settlement, he or she will
8 nevertheless still receive a proportionate share of the \$12,500.

9 17. “PAGA Payment” is the amount allocated as civil penalties
10 recoverable under the Private Attorneys General Act of 2004 Labor Code §2699,
11 (“PAGA”) for Labor Code violations. From the Gross Settlement Amount,
12 \$50,000.00 has been allocated as the PAGA Payment. Pursuant to the PAGA,
13 Labor Code § 2699(i), 75% of the PAGA Payment, \$37,500.00, will be paid to the
14 California Labor and Workforce Development Agency (“LWDA”), (“the LWDA
15 Payment”), and the remaining 25%, \$12,500.00, (“PAGA Member Payment”) will
16 be distributed on a proportional basis to the PAGA Members according to the
17 number of Pay Periods each worked during the PAGA Period.

18 18. “Participating Class Members” means all Class Members who do not
19 return to the Administrator valid and timely Requests for Exclusion.

20 19. “Preliminary Approval” means the Court Order Granting Preliminary
21 Approval of this Settlement Agreement, in a form substantially similar to **Exhibit**
22 **D.**

23 20. “Released Claims” means all claims, rights, demands, liabilities,
24 penalties, fines, debts and causes of action of every nature and description, under
25 state, federal, and local law, whether known or unknown, arising from the claims
26 pled in the Plaintiffs’ complaints filed in the Action or that could have been pled
27 based on the factual allegations in the Plaintiffs’ original respective complaints, or
28 in the operative Second Amended Class Action Complaint (**Exhibit A**), including

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1 but not limited to claims for unpaid wages, including any theory of piece-rate law,
2 unpaid minimum wage, meal and rest period premiums, waiting time penalties,
3 itemized wage statements, wages for unpaid time, other civil or statutory penalties
4 and any claim based on California Labor Code sections 201, 202, 203, 204, 226,
5 226.2, 226.3, 226.7, 510, 512, 1174(d) 1194, 1194.2, 1197, 2699 et seq., the
6 Private Attorneys General Act of 2004, California Code of Regulations, Title 8
7 Section 11000 et seq., the applicable Industrial Welfare Commission (IWC) Wage
8 Orders, including 7-2001, Business & Professions Code section 17200-17208 or
9 any related damages, penalties, restitution, disgorgement, interest or attorneys’ fees
10 for the period from October 26, 2016 through December 31, 2020. The “Released
11 Claims” specifically **excludes claims** based on the facts and/or legal theories
12 alleged or that could be alleged in the *Markson v. CRST, et al.*, United States
13 District Court, Central District of California, Case No. 5:17-cv-01261-FMO-SPx,
14 operative Complaint that include anti-competitive claims for the hiring of former
15 employees of other potential defendants in the *Markson* case.

16 21. “Released Parties” means each Defendant and each of their current
17 and former and present parents, subsidiaries and affiliated companies and entities
18 and their current, former and future officers, directors, members, managers,
19 employees, consultants, partners, parents, affiliates, subsidiaries, shareholders,
20 attorneys, insurers, representatives, joint venturers and agents, any predecessors,
21 successors, assigns, or legal representatives and any individual or entity who or
22 which could be jointly liable with Defendant and all persons or entities acting by,
23 through under or in concert with any of them.

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

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1 or fax stamped on or before the Response Deadline; and (d) clearly state that the
2 Class Member does not wish to be included in the Settlement as more fully set
3 forth in the Class Notice, and understand that by requesting exclusion, they will not
4 receive an Individual Settlement Payment. The date of the fax-stamp or postmark
5 will be the exclusive means to determine whether a Request for Exclusion has been
6 timely submitted.

7 23. “Response Deadline” means the deadline by which Class Members
8 must postmark or fax-stamp Requests for Exclusion, Objections, and disputes as to
9 the employment information on which their Individual Settlement Payments will
10 be based. The Response Deadline will be sixty (60) calendar days from the initial
11 mailing of the Notice Packet by the Settlement Administrator, unless the 60th day
12 falls on a Sunday or Federal holiday, in which case the Response Deadline will be
13 extended to the next day on which the U.S. Postal Service is open. The Response
14 Deadline for Requests for Exclusion will be extended fifteen (15) calendar days for
15 any Class Member who is re-mailed a Notice Packet by the Settlement
16 Administrator in accordance with the notice procedure described in Paragraph 46
17 of this Settlement Agreement, unless the 15th day falls on a Sunday or Federal
18 holiday, in which case the Response Deadline will be extended to the next day on
19 which the U.S. Postal Service is open. The Response Deadline may be extended by
20 express agreement between Class Counsel and Defendant.

21 24. “Settlement Administration Expenses” means the costs payable to the
22 Settlement Administrator for administering this Settlement pursuant to its terms.
23 Settlement Administration expenses are not to exceed \$30,000. Duties and
24 responsibilities of the Settlement Administrator include, but not limited to,
25 establishing a post office box, toll-free number, and toll-free facsimile number for
26 the return of Class Member communications, formatting, printing, distributing
27 (including with appropriate postage) Notice Packets to Class Members, and
28 tracking undelivered Notice Packets, conducting a National Change of Address

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1 search of the U.S. Post Office database to update Class Member addresses prior to
2 the initial mailing of the Notice Packets, skip tracing Notice Packets returned as
3 undeliverable using the Class Member’s social security number; providing weekly
4 status reports; calculating estimated Individual Settlement Payments and inserting
5 such amount in the individualized Notices of Class Action Settlement. Subject to
6 final Court approval and the Effective Date of settlement, the Administrator will
7 also be responsible for establishing and administering a qualified settlement fund
8 account, issuing IRS Forms 1099 and W-2, tax reporting, distributing the
9 Individual Settlement Payments, PAGA Payment, Class Representative Service
10 Payments, and Class Counsel Fees and Costs, and providing necessary certification
11 of completion of notice, reports and declarations, and other responsibilities set
12 forth in this Settlement Agreement and as requested by the Parties, and the Court.

13 25. “Settlement Administrator” or “Administrator” means CPT Group,
14 Inc., or any other third-party class action settlement administrator agreed to by the
15 Parties and approved by the Court for the purposes of administering this
16 Settlement. The Parties each represent that they do not have any financial interest
17 in the Settlement Administrator or otherwise have a relationship with the
18 Settlement Administrator that could create a conflict of interest. The Parties will
19 seek agreement from the Settlement Administrator to defend, indemnify, and hold
20 the Parties harmless for any disclosure, breach of privacy or security of Class
21 Member data under Settlement Administrator’s control, possession, or
22 management.

23 26. “Work Week” is defined as any week in which a Class Member drove
24 for Defendant in California at least one (1) shift during any seven consecutive
25 days, starting with the same calendar day each week.

26 **TERMS OF AGREEMENT**

27 Plaintiffs, on behalf of themselves and the Settlement Class, and Defendant
28 agrees as follows, for purposes of settlement only:

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1 27. Filing of Second Amended Class Action Complaint to add
2 JACQUELINE HUTTO as a co-Plaintiff to the RIVERA Action. Solely for the
3 purpose of facilitating the Settlement, the Parties stipulate to the filing of the
4 Second Amended Complaint adding JACQUELINE HUTTO as a Plaintiff to the
5 Action, who will thereafter dismiss without prejudice her later-filed action
6 following the Effective Date of Settlement of the Rivera Action. Once Preliminary
7 Approval of the Settlement has been granted, the Second Amended Class Action
8 Complaint will be deemed filed and served. Defendant is not required to file a
9 response to the Second Amended Class Action Complaint, and Defendant's prior
10 filed Answer including its general denials and affirmative defenses will be deemed
11 its Answer to the Second Amended Class Action Complaint. Defendant will
12 maintain all available defenses to the allegations in the Second Amended
13 Complaint.

14 28. Mediation, Settlement and Proportionate Increases of Gross
15 Settlement Amount. As relevant, the Parties attended mediation in September,
16 2019 with Hon. Jeffrey King (Ret.) who facilitated the informed and arm's length
17 negotiations, and came to a global maximum settlement amount of \$1,100,000.00,
18 with the intent of releasing Class claims through the date of Preliminary Approval.
19 To that end, on February 20, 2020, Plaintiffs filed a Motion for Preliminary
20 Approval for a Class estimated at 1,800 drivers who worked an estimated 37,000
21 Work Weeks during the Class Period, then defined as from October 26, 2016
22 through January 13, 2020. [Dkt. 27].

23 29. On May 1, 2020, the Court entered an Order denying Plaintiffs'
24 Motion for Preliminary Approval, [Dkt. 44] in large part based on procedural
25 grounds, with instruction to re-file with additional and corrected information. The
26 Parties subsequently met and conferred in attempts to comply with the Court
27 Order. During those met and confer discussions, in light of the fact that the Parties'
28 original settlement was contingent on a Class Period through the date of

1 Preliminary Approval, the Parties agreed to extend the Class Period through
2 October 31, 2020, in exchange for a proportional increase of the Gross Settlement
3 Amount to \$1,437,680.10 to cover the additional 300 Class Members and their
4 11,000 Work Weeks.

5 30. On October 22, 2020, Plaintiffs filed a Renewed Motion for
6 Preliminary Approval seeking approval of the Gross Settlement Amount of
7 \$1,437,680.10 for an estimated 2,100 Class Members that worked an estimated
8 48,259 Work Weeks during the Class Period, then defined as from October 26,
9 2016 through October 31, 2020. [Dkt. 47].

10 31. On November 20, 2020, the Court issued its Order Denying Plaintiffs'
11 Renewed Motion for Preliminary Approval without prejudice. [Dkt. 48]. The Court
12 requested certain edits be made and additional information be provided, as follows:

13 a) The Class definition. Within the Class definition, an incorrect
14 end date for the Class Period was included. The Class definition has been corrected
15 and revised to reflect an extended end date of the Class Period from October 31,
16 2020 to December 31, 2020. (See, Class definition, Paragraphs 6 and 7 above.)

17 b) Disputes. The Class Notice was silent on the protocol for a
18 Class Member to dispute the information on which their Settlement Payment
19 would be calculated. The Class Notice has been revised to notify Class Members
20 that they may challenge the information by returning a written statement to the
21 Administrator no later than the Response Deadline and including what they believe
22 to be the correct information.

23 c) Class Counsel's Litigation Expenses. Class Counsel litigation
24 expenses had been stated correctly in the Agreement and Class Notice. This has
25 been corrected. Class Counsel may seek reimbursement of litigation costs of not to
26 exceed \$20,000. See, Paragraph 4 above, and the Notice of Class Action
27 Settlement, **Exhibit B**.

28 d) Administration Expenses. Administration expenses had not

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1 been stated correctly. This too has been corrected. The Administration expenses
2 are not to exceed \$30,000. See, Paragraph 24 above, and the Notice of Class
3 Action Settlement.

4 e) Extent of Discovery. The Parties engaged in sufficient
5 discovery to support the settlement. Pursuant to the Parties' agreement to an
6 informal exchange of data to allow Plaintiff's Counsel to prepare for mediation on
7 a Class-wide basis, on August 28, 2019, Western Express produced the (1) total
8 number of Class Members in the Class Period through August 28, 2019; (2) total
9 number of former employees in the Class Period through August 28, 2019; (3) total
10 number of wage statements issued to Class Members from May 15, 2017 through
11 August 28, 2019; (4) total number of Class Member Pay Periods from April 6,
12 2017 through August 28, 2019; (5) total number of shifts worked by Class
13 Members during the class period through August 28, 2019, and (6) the number of
14 currently employed Class Members. Defendant also produced a sampling of Class
15 Member raw driver logs that encompassed 32,771 lines of data detailing time
16 punch records for 591 shifts. Plaintiff's counsel also conducted several Class
17 Member interviews.

18 f) Released Claims. The scope of the Released Claims, Paragraph
19 21 above, has been narrowed by excluding any potential claims that could be
20 alleged in the *Markson v. CRST, et al.* class action litigation. The parties in the
21 *Markson v. CRST, et al.* litigation approved the revised release language and
22 withdrew their objection to the settlement filed in this Action. Class Member will
23 not give up any rights he or she may otherwise have to participate in the *Markson*
24 *v. CRST, et al.* class action by participating in the Settlement of this Action.
25 Furthermore, the Released Claims are strictly limited to the claims alleged in this
26 Action.

27 32. For purposes of this Agreement, and for Plaintiffs' Renewed Motion
28 for Preliminary Approval, the Parties have agreed to extend Class Period from

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1 October 26, 2016 through October 31, 2020 to October 26, 2016 through
2 December 31, 2020, in exchange for a proportionate increase of the Gross
3 Settlement Amount from \$1,437,680.10 to \$1,510,040.12 for the additional 114
4 Class Members and their 478 Work Weeks. Accordingly, the Class is comprised
5 of an estimated 2,228 Class Members who worked an estimated 49,565 Work
6 Weeks during the October 26, 2016 through December 31, 2020 Class Period. Of
7 these Class Members, there are an estimated 1,856 PAGA Members who worked
8 an aggregate 27,900 Pay Periods during the April 6, 2017 through December 31,
9 2020 PAGA Period.

10 33. The proportional increase to the Gross Settlement Amount was based
11 on information obtained from Defendant’s payroll data from October 31, 2020
12 through December 31, 2020. The Parties mutually agree that the proportional
13 increase to the Gross Settlement Amount is fair and reasonable in light of the two-
14 month extended Class Period.

15 34. Impact of Any Court Determination Not to Enter Final Approval
16 Order or Rescission by Defendant. In the event the Court does not enter a Final
17 Approval Order, or Defendant elects to rescind the Settlement Agreement pursuant
18 to paragraph 51, and this Settlement Agreement does not become effective, the
19 following will occur:

20 a. the Parties’ stipulation to the filing of the Second Amended
21 Complaint will be deemed stricken as of the date the Court denies Final Approval
22 (“Final Approval Denial Date”), and the operative complaint in United States
23 District Court, Central District of California, Case No. 5:18-cv-01633-JGB-SHK
24 will be Plaintiff MARC RIVERA’s First Amended Complaint (as if this Settlement
25 Agreement had never existed, and not to prejudice any party);

26 b. the status of each of the respective RIVERA and HUTTO
27 Actions will be deemed to return to their status at the time immediately prior to the
28 filing of the Notice of Settlement and as if the Parties had never executed this

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1 Settlement Agreement and as if the Second Amended Complaint had never been
2 deemed filed; and

3 c. To the extent required by any court or otherwise necessary,
4 Plaintiffs will take all necessary steps to give effect to subparagraphs a. and b.
5 above.

6 35. Funding of the Gross Settlement Amount. Within ten (10) business
7 days of the Effective Date, Defendant shall transit the Gross Settlement Amount
8 plus the employer-sided payroll taxes to the Settlement Administrator which will
9 establish a qualified settlement account for distribution of the Court-ordered
10 payments pursuant to the terms of this Agreement.

11 36. Class Counsel Fees and Costs. Defendant agrees not to oppose or
12 impede any application or motion by Class Counsel for Class Counsel Fees in an
13 amount of up to 30% of the Gross Settlement Amount, plus the reimbursement of
14 costs and expenses associated with Class Counsel’s litigation and settlement of the
15 Action, not to exceed \$20,000. In consideration of Class Counsels’ Fees and Costs,
16 Class Counsel waive any and all claims to any further attorneys’ fees and expenses
17 in connection with the Action.

18 37. Net Settlement Amount. Following deduction of all Court-approved
19 payments from the Gross Settlement Amount, the remaining sum, the Net
20 Settlement Amount will be distributed entirely on a proportional basis to
21 Participating Class Members (“Individual Settlement Payment”).

22 38. Individual Settlement Payment Calculations. Each Participating Class
23 Member will receive an Individual Settlement Payment, which is a pro-rata share
24 of the Net Settlement Amount based on the Participating Class Member’s
25 aggregate number of Work Weeks worked during the Class Period, and the number
26 of Pay Periods worked during the PAGA Period. The Individual Settlement
27 Payment will be calculated by setting the Participating Class Member’s Individual
28 Workweeks as a ratio of the aggregate number of Work Weeks worked by all Class

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1 Members during the Class Period (“Class Workweeks”) and then multiplying that
2 ratio times the Net Settlement Amount. The formula is: Jane Doe Settlement
3 Payment = (Jane Doe Individual Workweeks / Class Workweeks) x Net Settlement
4 Amount. The Parties agree that the formula for allocating the Individual Settlement
5 Payments to Participating Class Members is reasonable and designed to provide a
6 fair distribution based on tenure of employment with Defendant. The Individual
7 Settlement Payments will be reduced by withholding and taxes as set forth in this
8 Settlement Agreement. For the PAGA Member Payment, the formula for the for
9 distribution of the \$12,500 allocated to PAGA Members is as follows: Jane Doe
10 PAGA Member Payment = Jane Doe Individual Pay Periods / All PAGA
11 Members’ Pay Periods x \$12,500.

12 39. Treatment of Individual Settlement Payments. Individual Settlement
13 Payments will be allocated 20% for the settlement of wage claims and subject to
14 withholdings and taxes and issuance of an IRS W-2 Form, and the remaining 80%
15 will be allocated to the settlement of claims as nontaxable statutory penalties
16 and/or interest under the California Labor Code, for which IRS Forms 1099 will be
17 issued by the Administrator.

18 40. No Credit Toward Benefit Plans/No Derivative Penalties. The
19 Individual Settlement Payments made under this Agreement, as well as any other
20 payments made pursuant to this Settlement Agreement, will not be utilized to
21 calculate any additional benefits under any benefit plans to which any Class
22 Members may be eligible, including, but not limited to: profit-sharing plans, bonus
23 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
24 plans, and any other benefit plan. Rather, it is the Parties’ intention that this
25 Settlement Agreement will not affect any rights, contributions, or amounts to
26 which any Class Members may be entitled under any benefit plans. The payment
27 of Individual Settlement Payments shall not trigger any derivative penalties or
28 required payments by Defendant to PAGA Members in any way.

1 41. Released Claims. Upon the Effective Date, and except as to such
2 rights of claims as may be created by this Settlement, Plaintiffs and each
3 Participating Class Member who has not returned to the Administrator a valid and
4 timely Request for Exclusion, shall fully release and discharge Defendant and
5 Released Parties from the Released Claims.

6 42. Settlement Administration Process. The Parties agree to cooperate in
7 the administration of the Settlement and to make all reasonable efforts to control
8 and minimize the costs and expenses incurred in administration of the Settlement.

9 **DISTRIBUTION OF THE CLASS NOTICE**

10 43. Delivery of the Class Data List. Within thirty (30) days of Preliminary
11 Approval, Defendant will provide the Class Data List to the Settlement
12 Administrator.

13 44. Confirmation of Contact Information in the Class Data List. Prior to
14 mailing the Notice of Class Action Settlement, Change of Address form, and pre-
15 printed return envelope (“Notice Packet”), the Administrator will perform a search
16 of the National Change of Address Database to update and correct for any known
17 or identifiable address changes. All Notice Packets returned to the Administrator as
18 undeliverable on or before the Response Deadline will be sent promptly via regular
19 First-Class U.S. Mail to the forwarding address, and the Administrator will
20 indicate the date of such re-mailing on the Notice Packet. If no forwarding address
21 is provided, the Administrator will promptly attempt to determine the correct
22 address using a skip-trace, or other search using the name, address and/or Social
23 Security number of the Class Member involved and will then perform a single re-
24 mailing. Those Class Members who receive a re-mailed Notice Packet will have
25 between the latter of (i) an additional fifteen calendar (15) days or (ii) the
26 Response Deadline to fax or postmark a Request for Exclusion or to serve an
27 Objection to the Settlement. If it is determined the undelivered Notice Packet is
28 associated with a currently employed, Defendant shall immediately take steps to

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1 obtain an updated address and provide it to the Administrator for remailing of the
2 Notice Packet. Upon completion of these steps, Defendant and the Administrator
3 will be deemed to have satisfied their obligation to provide the Notice Packet to the
4 affected Class Member. The affected Class Member will nonetheless remain a
5 member of the Class and will be bound by all the terms of the Settlement and the
6 Court's Final Approval Order and Judgment based thereon.

7 45. Notice Packets by First-Class U.S. Mail. Within ten (10) business
8 days after receiving the Class Data List from Defendant, the Administrator will
9 mail a Notice Packet to each Class Member via regular First-Class U.S. Mail.

10 46. Disputed Information. Any disputes regarding a Class Member's
11 dates of employment, or the number of Work Weeks or number of Pay Periods will
12 be resolved and decided by the Settlement Administrator based on Defendant's
13 records which, for purposes of this Settlement only, will be presumptively
14 determinative, subject to rebuttal by competent evidence, in any dispute over
15 entitlement to payment, or over membership in the Class. Each Class Member's
16 dates of employment, number of Work Weeks worked during the Class Period, and
17 number of Pay Periods worked during the PAGA Period will be stated in the Class
18 Member's individualized Notice of Class Action Settlement. See, **Exhibit B.** Any
19 Class Member who disputes the individualized data must notify the Settlement
20 Administrator of the dispute in writing postmarked or fax-stamped by the
21 Response Deadline and submit all information or evidence relating to the dispute
22 to the Settlement Administrator at such time. If there is a dispute, the
23 Administrator will within seven (7) days after receipt of the dispute, but no later
24 than ten (10) days after the Response Deadline, make a determination based on the
25 information provided by the Class Member and the information provided by
26 Defendant to the Settlement Administrator. The Administrator may consult with
27 Counsel for the Parties in reaching this determination. The Settlement
28 Administrator will give written notice to the Class Member and counsel for the

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1 Parties of its determination once the determination has been reached.

2 47. Defective Submissions. If a Class Member's Request for Exclusion is
3 defective as to the requirements listed in this Settlement Agreement and as set forth
4 in the Class Notice, that Class Member will be given an opportunity to cure the
5 defect(s). The Settlement Administrator will mail the Class Member a request to
6 cure letter within three (3) business days of receiving the defective submission to
7 advise the Class Member that his or her submission is defective and that the defect
8 must be cured to render the Request for Exclusion valid. The Class Member will
9 have until the later of (i) Response Deadline or (ii) fifteen (15) calendar days from
10 the date of the cure letter to fax stamp or postmark a cured Request for Exclusion.

11 48. Settlement Terms Bind All Class Members Who Do Not Submit a
12 Valid and Timely Request for Exclusion. Any Class Member who does not
13 affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
14 Request for Exclusion will be bound by all of its terms, including those pertaining
15 to the Released Claims, as well as any Judgment that may be entered by the Court
16 if it grants final approval to the Settlement.

17 49. Revocation of Settlement Agreement (by Defendant). If more than
18 two and one-half percent (2.5%) of the Class submit timely and valid Requests for
19 Exclusion, Defendant may, at their election, rescind the Settlement and all actions
20 taken in furtherance of it will be null and void. Defendant must exercise this right
21 of rescission, in writing, to Class Counsel within 15 calendar days after the
22 Settlement Administrator notifies the Parties of the total number of Requests for
23 Exclusion received by the Response Deadline. If the option to rescind is exercised,
24 then Defendant will be solely responsible for all costs associated with
25 administering the Settlement, including the Administrator's Costs accrued to that
26 point, but Defendant will not be liable for paying any other portion of the Gross
27 Settlement Amount.

28 50. Objections to the Settlement. To object to the Settlement, a Class

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1 Member must return a valid and timely objection to the Administrator on or before
2 the Response Deadline. For the objection to be valid and timely, it must include:
3 (i) the objector's full name, address, and telephone number; (ii) a statement of all
4 grounds for the objection (iii) a statement whether the objector intends to appear at
5 the Final Approval hearing; and (iv) and be signed by the Class Member. It must
6 also be returned to the Administrator postmarked or fax-stamped on or before the
7 Response Deadline. The Parties will be permitted to respond in writing to such
8 objections within the time period set by the Court. Class Members who do not file
9 a timely written objection and notice of intention to appear at the Final Approval
10 hearing will be deemed to have waived any and all objections and be foreclosed
11 from making any objections, whether as to any term of the Settlement, whether by
12 appeal or otherwise, to the Agreement. Class Members who file and serve timely
13 written Objection will have a right to appear at the Final Approval Hearing to have
14 their objections heard by the Court. At no time will any of the Parties or their
15 counsel seek to solicit or otherwise encourage Class Members to submit written
16 objections to the Settlement Agreement or appeal from the Final Approval Order
17 and Judgment. Class Counsel will not represent any Class Members with respect
18 to any such objections to this Settlement.

19 51. Certification Reports By Settlement Administrator Regarding
20 Individual Settlement Payment Calculations. The Settlement Administrator will
21 provide Defendant's counsel and Class Counsel a weekly report which provides,
22 among other things: (i) the number of Class Members who submit Requests for
23 Exclusion; (ii) the number of deficient Requests for Exclusion; (iii) the number of
24 Class Members who return Objections; (iv) communications with individuals
25 seeking to be added to the Class; and (iv) the number of challenges returned by
26 Class Members to the information contained in their Class Notice. Additionally,
27 the Settlement Administrator will be asked to provide its declaration regarding
28 administration of the Settlement to be filed with the Motion for Order Granting

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1 Final Approval of the Settlement and Entering Judgment.

2 52. Timing of Distribution of Individual Settlement Payments. Within ten
3 (10) days of receipt of the Gross Settlement Amount and the employer-sided taxes,
4 the Settlement Administrator will issue payments as approved by the Court, i.e.,
5 (1) Individual Settlement Payments to Participating Class Members, which may
6 include a PAGA Member Payment, if eligible; (2) Class Representative Service
7 Payments to Plaintiffs; (3) LWDA Payment, (4) Attorneys' Fees and Litigation
8 Costs to Class Counsel and (5) the Settlement Administration Expenses to CPT
9 Group, Inc.

10 53. Uncashed or Undeliverable Settlement Checks. After 30 days of
11 issuance of Individual Settlement Payment checks to Participating Class Members,
12 the Administrator will mail a reminder postcard to all members of the Class who
13 have yet to cash their Settlement Payment checks, and advise that all checks will
14 be voided after 120 calendars if not cashed by that date, and that funds will be
15 forwarded to the State of California, Controller's Office after 120 days for further
16 handling on behalf of the Class Member whose check was voided. Upon
17 completion of administration of the Settlement, the Settlement Administrator will
18 provide a written declaration under oath certifying such completion to the Parties
19 for filing with the Court.

20 54. Administration of Taxes by the Settlement Administrator. The
21 Settlement Administrator will be responsible for issuing to Plaintiffs, Participating
22 Class Members, PAGA Members (if they successfully opted out of the Settlement),
23 and Class Counsel the designated IRS Forms W-2 and 1099, as may be required by
24 law for all amounts paid pursuant to this Agreement. The Settlement Administrator
25 will also be responsible for forwarding all payroll taxes and other legally required
26 withholdings to the appropriate government authorities.

27 55. Tax Liability. Defendant makes no representation as to the tax
28 treatment or legal effect of the payments called for in this Settlement Agreement,

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1 and Plaintiffs are not relying on any statement, representation, or calculation by
2 Defendant or by the Settlement Administrator in this regard. Plaintiffs understand
3 and agree that except for Defendant’s payment of the employer’s portion of any
4 payroll taxes, Plaintiffs and Participating Class Members will be solely responsible
5 for the payment of any taxes and penalties assessed on the Individual Settlement
6 Payments. The Notice of Class Action Settlement will inform Participating Class
7 Members that they will be solely responsible for the payment of any taxes and
8 penalties assessed on the Individual Settlement Payments.

9 56. Defendant’s Responsibility for Employer Taxes: For the portion of
10 the Individual Settlement Payments designated as “wages” for purposes of tax
11 reporting, Defendant will separately pay the employer-sided contribution of all
12 federal, state, and local taxes (including, but not limited to, FICA, FUTA, and
13 SDI). The employer-sided contributions will not be paid or deducted from the
14 Gross Settlement Amount.

15 57. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT
16 (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
17 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE
18 ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES
19 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
20 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG
21 THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
22 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
23 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
24 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
25 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
26 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
27 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL
28 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN

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1 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
2 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
3 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER
4 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
5 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER
6 TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
7 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY
8 OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
9 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S
10 OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
11 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
12 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
13 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
14 CONTEMPLATED BY THIS AGREEMENT.

15 58. No Prior Assignments. The Parties and their counsel represent,
16 covenant, and warrant that they have not directly or indirectly assigned,
17 transferred, encumbered, or purported to assign, transfer, or encumber to any
18 person or entity any portion of any liability, claim, demand, action, cause of action
19 or right released and discharged in this Settlement Agreement.

20 59. Release of Claims by Class Members and PAGA Members. Upon the
21 Effective Date, all Class Members who do not timely submit a valid Request for
22 Exclusion, do and will be deemed to have fully, finally and forever released,
23 settled, compromised, relinquished and discharged any and all of the Released
24 Parties of and from any and all Released Claims accruing during the Class Period.
25 In addition, on the Effective Date, all Class Members who do not timely submit a
26 valid Request for Exclusion and all successors in interest will be forever barred by
27 law from prosecuting any and all Released Claims against the Released Parties.
28 Plaintiffs’ counsel will provide this agreement and necessary documents to the

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1 LWDA as required by law, upon the filing of the Second Amended Renewed
2 Motion for Preliminary Approval.

3 60. Release by Plaintiffs. Upon the Effective Date, in addition to the
4 Released Claims being released by Participating Class Members, each named
5 Plaintiff will provide the following general release (“General Release”): Plaintiff
6 Marc Rivera and Plaintiff Jacqueline Hutto, each on their own behalf and on behalf
7 of their heirs, spouses, executors, administrators, attorneys, agents and assigns,
8 fully and finally releases the Released Parties from all claims, demands, rights,
9 liabilities and causes of action of every nature and description whatsoever, known
10 or unknown, asserted or that might have been asserted, whether in tort, contract, or
11 for violation of any state or federal statute, rule or regulation arising out of, relating
12 to, or in connection with any act or omission by or on the part of any of the
13 Released Parties committed or omitted prior to the execution of this Agreement.
14 This General Release includes any unknown claims. To the extent the foregoing
15 releases are releases to which Section 1542 of the California Civil Code or similar
16 provisions of other applicable law may apply, Plaintiffs expressly waive any and
17 all rights and benefits conferred upon them by the provisions of Section 1542 of
18 the California Civil Code or similar provisions of applicable law which are as
19 follows:

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

26 The significance of this release and waiver of Civil Code Section 1542 has
27 been explained to Plaintiffs by their counsel.

28 61. Nullification of Settlement Agreement. In the event that: (i) the Court

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1 does not finally approve the Settlement as provided in this Settlement Agreement;
2 or (ii) the Settlement does not become final for any other reason, then this
3 Settlement Agreement and any documents generated to bring it into effect will be
4 null and void. Any order or judgment entered by the Court in furtherance of this
5 Settlement Agreement (that is not approved) will likewise be treated as void from
6 the beginning.

7 62. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before
8 the Court to request Preliminary Approval of the Settlement Agreement, and the
9 entry of a Preliminary Approval Order substantially similar to **Exhibit D** attached
10 hereto, which seeks conditional certification of the Settlement Class for settlement
11 purposes only, (ii) preliminary approval of the proposed Settlement Agreement,
12 (iii) approval of the Notice of Class Action Settlement; and (iv) sets a date for a
13 Final Approval Hearing.

14 63. Final Approval Hearing, Order Granting Final Approval and Entering
15 Judgment. Upon expiration of the deadline to fax stamp or postmark Requests for
16 Exclusion, or Objection, and with the Court's permission, a Final Approval
17 Hearing will be conducted to determine whether the Settlement Agreement should
18 be granted final approval, and to consider and approve requests for payment of (i)
19 the Class Counsel Fees and Costs; (ii) the Class Representative Service Payments;
20 (iii) the PAGA Payment, and (iv) the Settlement Administration Expenses. Class
21 Counsel will be responsible for drafting all documents necessary to obtain final
22 approval. Class Counsel will also be responsible for drafting the attorneys' fees
23 and costs application to be heard at the Final Approval Hearing. The motion for
24 Class Counsel's Fees and Costs will be filed two weeks prior to Response
25 Deadline.

26 64. Judgment and Continued Jurisdiction. Upon the grant of Final
27 Approval of the Settlement by the Court the Parties will present a proposed Order
28 Granting Final Approval of Class and Representative Action and Entering

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1 Judgment thereon in a form substantially similar to **Exhibit E**. After entry of the
2 Judgment, the Court will have continuing jurisdiction solely for purposes of
3 addressing: (i) the interpretation and enforcement of the terms of the Settlement,
4 (ii) Settlement administration matters, and (iii) such post- Judgment matters as may
5 be appropriate under court rules or as set forth in this Agreement.

6 65. CAFA Notice. Within ten (10) calendar days after Plaintiffs file the
7 Renewed Motion for Preliminary Approval, Defendant shall mail the notice of
8 proposed settlement and required information pursuant to the Class Action
9 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715 (“CAFA Notice”) to the
10 Attorney General of the United States, the Attorney General of the State of
11 California, and the Attorney General of any state where a Class Member resides.
12 Similarly, Class Counsel will timely comply with all notice requirements for the
13 California Labor Workforce Development Agency process under the PAGA
14 Statute, Labor Code section 2698, et seq.

15 66. Exhibits Incorporated by Reference. The terms of this Agreement
16 include the terms set forth in Exhibits A through E, incorporated by this reference
17 as though fully set forth in this Settlement Agreement. Any Exhibits to this
18 Agreement are an integral part of the Settlement.

19 67. Confidentiality Agreement. The Parties and their counsel agree that
20 none of them will issue any marketing materials, press release, social media post,
21 internet or website announcement, or otherwise initiate any contact with the press,
22 respond to any press inquiry or have any communication with the press regarding
23 the Settlement or the terms of this settlement. Class Counsel will not communicate
24 with other wage-hour plaintiffs’ counsel about this Settlement, nor utilize it in any
25 way in their marketing or advertising materials or website prior to Preliminary
26 Approval.

27 68. Entire Agreement. This Settlement Agreement and its Exhibits
28 constitute the entirety of the Parties’ settlement terms. No other prior or

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1 contemporaneous written or oral agreements may be deemed binding on the
2 Parties. The Parties expressly recognize California Civil Code section 1625 and
3 California Code of Civil Procedure section 1856(a), which provide that a written
4 agreement is to be construed according to its terms and may not be varied or
5 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral
6 or written representations or terms will modify, vary or contradict the terms of this
7 Agreement.

8 69. Amendment or Modification. This Settlement Agreement may be
9 amended or modified only by a written instrument mutually signed by counsel for
10 the Parties or their successors-in-interest.

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

24 71. Binding on Successors and Assigns. This Settlement Agreement will
25 be binding upon, and inure to the benefit of, the successors or assigns of the Parties
26 hereto, as previously defined.

27 72. Execution and Counterparts. This Settlement Agreement is subject
28 only to the execution of all Parties. However, the Agreement may be executed in

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1 one or more counterparts. All executed counterparts and each of them, including
2 facsimile and scanned copies of the signature page, will be deemed to be one and
3 the same instrument provided that counsel for the Parties will exchange among
4 themselves original signed counterparts.

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

13 74. Invalidity of Any Provision. Before declaring any provision of this
14 Settlement Agreement invalid, the Court will first attempt to construe the provision
15 as valid to the fullest extent possible consistent with applicable precedents so as to
16 define all provisions of this Settlement Agreement valid and enforceable.

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

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1 proceeding to enforce the terms of this Settlement Agreement, this Settlement
2 Agreement and its terms and provisions will not be offered or received as evidence
3 in any action or proceeding to establish any liability or admission on the part of
4 Defendant or to establish the existence of any condition constituting a violation of,
5 or a non-compliance with, federal, state, local or other applicable law.

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

9 77. Waiver. No waiver of any condition or covenant contained in this
10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will
11 be considered to imply or constitute a further waiver by such party of the same or
12 any other condition, covenant, right or remedy.

13 78. Enforcement Actions. In the event that one or more of the Parties
14 institutes any legal action or other proceeding against any other Party to enforce
15 the provisions of this Settlement Agreement or to declare rights and/or obligations
16 under this Settlement Agreement, the prevailing Party will be entitled to recover
17 from the non-prevailing Party reasonable attorneys' fees and costs, including
18 expert witness fees incurred in connection with any enforcement actions.

19 79. Mutual Preparation. The Parties have had a full opportunity to
20 negotiate the terms and conditions of this Agreement. Accordingly, this Settlement
21 Agreement will not be construed more strictly against one party than another
22 merely by virtue of the fact that it may have been prepared by counsel for one of
23 the Parties, it being recognized that, because of the arms'-length negotiations
24 between the Parties, all Parties have contributed to the preparation of this
25 Agreement.

26 80. Representation By Counsel. The Parties acknowledge that they have
27 been represented by counsel throughout all negotiations that preceded the
28 execution of this Agreement, and that this Agreement has been executed with the

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1 consent and advice of counsel. Further, Plaintiffs and Class Counsel warrant and
2 represent that there are no liens on the Settlement Agreement.


3 81. All Terms Subject to Final Court Approval. All amounts and
4 procedures described in this Settlement Agreement will be subject to final Court
5 approval.

6 82. Cooperation and Execution of Necessary Documents. All Parties will
7 cooperate in good faith and execute all documents to the extent reasonably
8 necessary to effectuate the terms of this Settlement Agreement.

9 83. Binding Agreement. The Parties warrant that they understand and
10 have full authority to enter into this Agreement, and further intend that this
11 Agreement will be fully enforceable pursuant to Code of Civil Procedure § 664.6
12 and binding on all Parties; Parties agree that it will be admissible and subject to
13 disclosure in any proceeding to enforce its terms, notwithstanding any mediation
14 confidentiality provisions that otherwise might apply under federal or state law.

15 **PLAINTIFF**

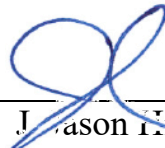
16 Dated: 8/16/2021

17 By:  _____

18 Marc Rivera

19 **COHELAN KHOURY & SINGER**
20 **LEBE LAW APC**

21 Dated: 8/16/2021

22 By:  _____
23 Jason Hill

24 Attorneys for Plaintiff Marc Rivera on
25 behalf of himself, and all others similarly
26 situated

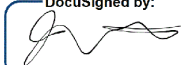
27 *[Signatures continued, next page]*

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PLAINTIFF

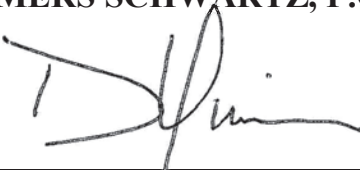
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By: E2B516EF775D4EA...

Jacquelyn Hutto

**DAVID YEREMIAN & ASSOCIATES,
INC.
SOMMERS SCHWARTZ, P.C.**

Dated: August 11, 2021


By: _____

David Yeremian
Alvin B. Lindsay

Attorneys for Plaintiff Jacquelyn Hutto on
behalf of herself and all others similarly
situated

**DEFENDANT
WESTERN EXPRESS, INC.**

Dated: _____

By: _____

[NAME/TITLE]

Print _____

As authorized agent of
Western Express, Inc.

VARNER & BRANDT LLP

Dated: _____

By: _____
Richard D. Marca
Attorneys for Defendant Western Express,
Inc.

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

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PLAINTIFF

Dated: _____

By: _____

Jacquelyn Hutto

**DAVID YEREMIAN & ASSOCIATES,
INC.**

SOMMERS SCHWARTZ, P.C.

Dated: _____

By: _____

David Yeremian

Alvin B. Lindsay

Attorneys for Plaintiff Jacquelyn Hutto on
behalf of herself and all others similarly
situated

DEFENDANT

WESTERN EXPRESS, INC.

Dated: 8/12/21

By: 

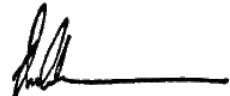
[NAME/TITLE]

Robert J. Welhoelter

Print VP Risk Mgt

As authorized agent of
Western Express, Inc.

VARNER & BRANDT LLP

By: 

Richard D. Marca

Dated: 8/12/21

Attorneys for Defendant Western Express,
Inc.