

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

ANDREW BEISSEL, an individual, J&B ENTERPRISES, INC., a Colorado Corporation, individually and on behalf of all others similarly situated,

Case No. CIV-21-903-R

Plaintiff,

v.

WESTERN FLYER EXPRESS, LLC,

Defendant.

**AMENDED JOINT STIPULATION OF SETTLEMENT AND RELEASE OF
CLASS AND COLLECTIVE ACTION**

This Amended Joint Stipulation of Settlement and Release of Class and Collective Action is made and entered into by Plaintiffs, Andrew Beissel, an individual, J&B Enterprises, Inc., a Colorado Corporation, individually, and on behalf of others similarly situated (“Plaintiffs”), as defined below, and Defendant, Western Flyer Express, LLC (“WFX”), on the other hand. This Stipulation is subject to the approval of the Court pursuant to Fed. R. Civ. P. 23(c) and is made for the sole purpose of attempting to consummate settlement of certain claims in this class and collective action on a classwide and collective basis subject to the following terms and conditions.

I. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Stipulation are not specifically defined below, but are defined elsewhere in this Stipulation, they are incorporated by reference into this definition section.

1. **Action.** “Action” shall mean the civil action entitled *Andrew Beissel, J&B Enterprises, Inc., a Colorado Corporation, individually and on behalf of all others similarly situated, v. Western Flyer Express, LLC*, Case No. CIV-21-903-R, pending in the U.S. District Court for the Western District of Oklahoma.

2. **Administrative Expenses.** “Administrative Expenses” shall include any and all costs incurred in connection with engaging the Settlement Administrator.

3. **CAFA Notice.** “CAFA Notice” shall mean the notice of this Stipulation required to be served by Defendant with the appropriate federal and state agencies as required by 28 U.S.C. § 1715(b).

4. **Claims.** “Claims” shall mean the claims for relief asserted in the Complaint in this Action, the operative Amended Complaint in the Action, as well as claims to be asserted in a Second Amended Complaint as discussed in Section IX.1. of this Joint Stipulation of Settlement, including, but not limited to: (1) failure to pay wages and the minimum wage under the Fair Labor Standards Act (FLSA); (2) unlawful sale of business opportunities under Oklahoma law; (3) deceptive and unfair trade practices under Oklahoma law; (4) deceptive trade practices under Oklahoma law; (5) fraud, constructive fraud, misrepresentation, and negligent misrepresentation under Oklahoma law; (6) negligence under Oklahoma law; and (7) Federal Forced Labor and Federal Trafficking statutes.

5. **Classes.** The “Classes” at issue in this settlement are defined as follows:
Oklahoma Class – All current and former individuals who provide(d) transportation services for WFX within the United States, who entered into an Independent Contractor Agreement, or a similarly styled agreement, with WFX. from December 7, 2017 to March 11, 2021.

Fair Labor Standards Act (FLSA) Collective Members – All current and former individuals who provided transportation services for WFX within the United States, between December 7, 2017 and March 11, 2021, who (1) entered into an Independent Contractor Agreement, or similarly styled agreement, with WFX, (2) were classified as

independent contractors, and (3) sign or cash the settlement check(s) they receive as a result of this settlement.

6. **Class Counsel.** “Class Counsel” shall mean Schneider Wallace Cottrell Konecky LLP, 2000 Powell Street, Suite 1400, Emeryville, California 94608 and Law Offices of Robert S. Boulter, 1101 Fifth Avenue, Suite 310, San Rafael, California 94901.

7. **Class Member.** “Class Member” shall mean any person who is a member of the Class, or, if such person is incompetent or deceased, the person's legal guardian, executor, heir or successor-in-interest.

8. **Class Notice.** “Class Notice” shall mean the Notice of Proposed Class and Collective Action Settlement and Hearing Date for Court Approval, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members.

9. **Class Participants.** “Class Participants” shall mean any and all Class Members who do not submit a timely opt-out request as provided in this Stipulation.

10. **Collective Period.** “Collective Period” shall mean December 7, 2017, to March 11, 2021.

11. **Complaint.** “Complaint” shall mean the Class and Collective Action Complaint filed on December 7, 2020, in this Action.

12. **Court.** “Court” shall mean the U.S. District Court for the Western District of Oklahoma.

13. **Defendant.** “Defendant” shall mean Western Flyer Express, LLC.

14. **Defense Counsel.** “Defense Counsel” shall mean Christopher Scaperlanda and Tim Spencer, of McAfee Taft, 211 N. Robinson, South Tower, 8th Floor, Oklahoma City, Oklahoma 73102.

1. **Effective Date.** “Effective Date” shall be the date when all of the following events have occurred: (a) this Stipulation has been executed by all Parties

and by Class Counsel and Defense Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Class Members providing them with an opportunity to opt-out of the Settlement; (d) the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Classes and approving this Stipulation; and (e) in the event there are written objections filed prior to the Final Approval and Fairness Hearing that are not later withdrawn, the later of the following events: when the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ, or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief. It is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final and there is no further opportunity for recourse by an appellant or objector who seeks to contest the Settlement. In the event that no objections are filed, the Effective Date shall be after steps (a) through (d) have been completed.

2. **FLSA.** "FLSA" shall mean the Fair Labor Standards Act.

3. **FLSA Collective Members.** "FLSA Collective Members" shall mean all current and former individuals who provided transportation services for WFX within the United States, between December 7, 2017 and March 11, 2021, who (1) entered into an Independent Contractor agreement with WFX (2) were classified as independent contractors, and (3) sign or cash the settlement check(s) they receive as a result of this settlement.

4. **Final Approval and Fairness Hearing.** "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness, reasonableness,

and adequacy of the Settlement. The hearing will be scheduled to take place after expiration of the 90-day notice period required for the CAFA Notice.

5. **Forced Labor and Federal Trafficking Statutes** shall mean the laws under Title 18 of U.S. Code Section 1581 *et seq.* pertaining to debt servitude and/or peonage and involuntary servitude.

6. **Gross Settlement Amount.** “Gross Settlement Amount” shall mean the non-reversionary total amount of FOUR MILLION, NINE HUNDRED THOUSAND DOLLARS AND ZERO CENTS **(\$4,900,000.00)** that Defendant will pay in connection with this Settlement, in exchange for the release of Class Participants’ Released Claims. The Gross Settlement Amount includes the (a) Net Settlement Amount, (b) Administrative Expenses, (c), Class Counsel’s claims for attorneys’ fees, costs, and expenses as approved by the District Court, and (d) a Service Award to the Plaintiffs as approved by the District Court. There will be no reversion. Defendant will have no obligation to pay any amount in connection with this Settlement apart from the Gross Settlement Amount.

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

8. **Individual Settlement Amount.** “Individual Settlement Amount” shall mean the amount ultimately distributed to each Class Participant.

9. **Net Settlement Amount.** “Net Settlement Amount” shall mean the Gross Settlement Amount less (a) Administrative Expenses, (b) Class Counsel’s awarded attorneys’ fees, costs and expenses as determined by the District Court, and (c) a Service Award to Plaintiffs as approved by the District Court.

10. **Oklahoma Class Period.** “Oklahoma Class Period” shall mean December 7, 2017, to March 11, 2021

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

12. **Opt-Out Request**. “Opt-Out Request” shall mean a timely and valid request for exclusion from the Oklahoma Class in accordance with the terms of the Class Notice, or as otherwise approved by the Court.

13. **Parties**. “Parties” shall mean Plaintiffs and Defendant.

14. **Plaintiffs**. “Plaintiffs” shall mean Plaintiffs, Andrew Beissel and J&B Enterprises, Inc.

15. **Preliminary Approval Date**. “Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Stipulation.

16. **Released Claims**. “Released Claims” shall mean any and all claims, demands, causes of action, charges, and grievances, of whatever kind or nature, whether known or unknown, suspected or unsuspected, which Plaintiffs and the Class Members now own or hold or have at any time before the Effective Date owned or held against Defendant or any of the Released Parties and which arose out of, are in any way connected to, or that were made or could have been made based on facts, theories, and claims pled in the Complaint, Amended Complaint, or Second Amended Complaint. The Released Claims include, but are not limited to, all wage and hour claims under the FLSA, 29 U.S.C. §§ 206, *et seq.*, that were alleged, inferred, pled or could have been pled based on the factual allegations of the forthcoming Second Amended Complaint, , all claims for the unlawful sale of business opportunities under the Oklahoma Business Opportunity Sales Act, 71 Okla. Stat. §§ 801, *et seq.*; all claims for deceptive and unfair trade practices under the Oklahoma Consumer Protection Act, 15 Okla. Stat. §§ 752, *et seq.*; all claims for deceptive trade practices under the Oklahoma Deceptive Trade Practices

Act, 78 Okla. Stat. §§ 52, *et seq.*; all claims for constructive fraud, fraud, misrepresentation, and negligent misrepresentation; and all claims under Title 18 of U.S. Code Section 1581 *et seq.* pertaining to debt servitude and/or peonage and involuntary servitude. The relevant time period for Released Claims will be those that arose between December 7, 2017, and December 31, 2021.

17. Released Parties. “Released Parties” shall mean Defendant, and its present and former parent or holding companies, subsidiaries, divisions, affiliates of all kinds and degrees, successors, predecessors, related companies or joint ventures, and each of their present and former officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, representatives, consultants, administrators, trustees, general and limited partners, predecessors, successors and assigns.

18. Service Award. “Service Award” shall mean any additional monetary payment provided to Plaintiffs for their efforts on behalf of the Classes in this Action. Defendant shall not object to Plaintiffs requesting a Service Award in an amount up to \$25,000.

19. Settlement. “Settlement” shall mean the class and collective action settlement embodied in this Stipulation, which is subject to Court approval.

20. Settlement Administrator. “Settlement Administrator” shall mean CPT Group which the Parties have agreed will be responsible for administration of the Settlement and related matters, or another neutral administrator mutually agreed to by the Parties.

21. Stipulation. “Stipulation” shall mean this Joint Stipulation of Settlement and Release of Class and Collective Action, including any attached exhibits.

22. WFX shall mean Western Flyer Express, LLC.

II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION

1. Plaintiffs' Claims. On December 7, 2020, Plaintiffs filed their original Complaint in the U.S. District Court for the Northern District of Oklahoma. The case was subsequently transferred to the U.S. District Court for the Western District of Oklahoma, Case No. CIV-21-903-R.

The operative Amended Complaint alleges that Defendant deceived individuals into joining and/or purchasing its lease operator program. The Amended Complaint asserts the following claims for relief: (1) the Oklahoma Consumer Protection Act (OCPA), 15 Okl. St. §§ 751, et seq., (2) the Oklahoma Deceptive Trade Practices Act (ODTPA), 78 Okl. St. §§ 51 et seq., (3) common law fraud and misrepresentation, and (4) negligence.

2. Defendant's Denial of Wrongdoing and Liability. Defendant denies each and every one of the claims and contentions alleged by Plaintiffs in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendant contends it complied in good faith with the FLSA, treated contractors fairly, and complied with all applicable provisions of Oklahoma law cited in the Amended Complaint or any other Complaint later filed. Defendant further denies, for any purpose other than settling this Action, that the Claims are appropriate for class or representative treatment. Nonetheless, Defendant has concluded further litigation relating to the Claims would be protracted and expensive and that it is desirable that the Claims be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's businesses without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent in any litigation,

especially in complex cases such as the Action. Defendant has, therefore, determined that it is desirable and beneficial that the Claims be settled in the manner and upon the terms and conditions set forth in this Stipulation.

3. Discovery, Investigation, and Research. Class Counsel have conducted discovery and investigation relating to the Claims during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, (a) multiple meetings and conferences with the Plaintiffs; (b) inspection and analysis of documents and data produced by the Plaintiffs and/or Defendant; (c) analysis of the legal positions taken by Defendant; (d) investigation into the viability of class treatment of the claims asserted in the Action; (e) analysis of potential classwide damages; (f) research of the applicable law with respect to the claims asserted and the potential defenses thereto, (g) exchanging information and analysis with Defendant in advance of mediation, and (h) assembling of data for calculating damages.

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

4. Allegations of Plaintiffs and Benefits of Settlement. The informal discovery conducted in this matter, as well as discussions between Class Counsel and Defense Counsel, have been adequate to give Plaintiffs and Class Counsel a sound understanding of the merits of the Classes' positions and to evaluate the worth of the Claims of the Class. This Settlement was reached with the assistance of an experienced mediator, Michael Russell, after arm's-length bargaining by the Parties during a full-day mediation session. The discovery conducted in this Action and the information exchanged by the Parties through mediation are sufficient to reliably

assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

Plaintiffs and Class Counsel believe that the Claims have merit. However, Plaintiffs and Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Claims in this Action against Defendant through trial and appeals. Class Counsel has taken into account the uncertain outcome and the risk of any litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty of maintaining the Action as a class and/or collective action. Class Counsel is mindful of the inherent problems of proof under, and possible defenses to, the Claims. Class Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits upon Plaintiffs and Class Members and that an independent review of this Stipulation by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel have determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiffs and Class Members.

5. Intent of the Settlement. The Settlement set forth herein intends to achieve the following: (1) entry of an order approving the Settlement and granting the monetary and other relief set forth in this Stipulation to the Class Participants; (2) entry of judgment and dismissal with prejudice of the Claims; (3) discharge of Released Parties from liability for any and all of the Released Claims as to the Class Participants; and (4) discharge of the Released Parties from liability to the Plaintiffs in the form of a general release.

III. SETTLEMENT CONSIDERATION

1. Gross Settlement Amount. The Gross Settlement Amount shall not exceed the aggregate sum of FOUR MILLION NINE HUNDRED THOUSAND

DOLLARS (**\$4,900,000.00**) in full settlement of the Released Claims. The Gross Settlement Amount shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) a general release of all claims by the Plaintiffs, (c) the Administrative Expenses, (d) Class Counsel's claims for attorneys' fees, costs, and expenses as approved by the District Court, (e) a Service Award to the Plaintiffs as approved by the District Court, and (f) any other obligation of Defendant under this Stipulation.

2. Service Award for Plaintiffs. Plaintiffs may, at the discretion of the Court, receive a Service Award, subject to Court approval, in an amount up to \$25,000 for their efforts on behalf of the Classes in this Action, including assisting in investigation and consulting with Class Counsel. Defendant shall not oppose any request by Plaintiffs for the Service Award, provided that, in exchange for receipt of a Service Award, Plaintiffs execute the release provided for in this Stipulation, which release will be effective upon the Effective Date. Defendant's providing of any relevant facts as to the Court's assessment of a Service Award will not be considered opposition to such request. Any Service Award approved by the Court shall be paid to Plaintiffs from the Gross Settlement Amount and shall be in addition to any distribution to which Plaintiffs may otherwise be entitled as a Class Participant. The Settlement Administrator will report the Service Award paid to Plaintiffs on an IRS Form 1099. Plaintiffs shall be responsible for the payment of any and all taxes with respect to their Service Award and shall hold Defendant harmless from any and all liability with regard thereto.

3. Payment to Class Participants. Each Class Participant shall receive payment of an Individual Settlement Amount, which shall be calculated in accordance with Article VII.

4. Tax Treatment of Payments. The parties agree that the Individual Settlement Amounts distributed to Class Participants will be reported on an IRS

Form 1099. Further, the attorneys' fees, costs, and expenses separately paid to Class Counsel will also be reported on an IRS Form 1099. The Settlement Administrator will also report the Service Award paid to Plaintiffs on an IRS Form 1099. In the event any portion of Individual Settlement Amounts paid to Plaintiffs or the Class Participants is ultimately construed by the IRS or any other taxing authority to be taxable income from which taxes should have been withheld, Plaintiffs and the Class Participants shall pay any and all such taxes, interest, and penalties on the amount they receive.

5. Confidentiality of settlement terms. To the extent allowed by law, each party shall keep the terms of this Agreement and the process and documents necessary to carry it into effectiveness, as confidential, except that a party may disclose the terms of this Agreement to the party's attorneys, accountants, and other professional advisors who are not employees of a party as necessary for the normal operations of the party and the performance of this Agreement. A party may disclose the terms of this Agreement if legally required to do so by statute, or a court or governmental authority possessing the power to compel such disclosure. Upon receipt of such a demand for disclosure, the party receiving such demand shall provide notice to the other Parties as soon as practicable and provide that party reasonable time, if practicable, to contest the disclosure to the extent allowed by law.

IV. ATTORNEYS' FEES, COSTS, AND EXPENSES OF CLASS COUNSEL

1. Class Counsel Attorneys' Fees, Costs, and Expenses. As part of the motion for final approval of the Settlement, Class Counsel may submit an application for an award of attorneys' fees not to exceed 33.33% of the Gross Settlement Amount, in addition to an application for reimbursement of costs and expenses not to exceed \$100,000.00, which will be presented to and determined by

the Court at the Final Approval and Fairness Hearing. Defendant agrees not to object to any such fee, cost or expense application as long as they do not differ from the parameters described above in this Section IV, 1. As a condition of this Settlement, Class Counsel have agreed to pursue their attorneys' fees, costs, and expenses with respect to the Claims only in the manner reflected by this Section. Any attorneys' fees, costs, and expenses awarded by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Participants. The Settlement is not conditioned on the Court's approval of Class Counsel's petition for attorneys' fees, costs, and expenses, and any amounts that are not approved for attorneys' fees, costs, and expenses shall remain part of the Net Settlement Amount.

The attorneys' fees, costs, and expenses approved by the Court shall encompass, with respect to the Claims: (a) fees for all work performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent Plaintiffs or the Classes through the date of this Stipulation; (b) fees for all work to be performed and costs and expenses to be incurred in connection with approval by the Court of the Settlement, including any appeal arising out of an objection to the Settlement; and (c) fees for all work to be performed and costs and expenses, if any, incurred in connection with administering the Settlement through final approval of the Settlement and dismissal of the Action, with prejudice.

2. Payment of Attorneys' Fees, Costs, and Expenses. Class Counsel's attorneys' fees, costs, and expenses as awarded by the Court shall be paid by the Settlement Administrator within 14 days¹ of the Effective Date out of the Gross Settlement Amount in accordance with Article VII.

No decision by the Court or any court on any application for an award of Class Counsel Attorneys' Fees, Costs, and Expenses or Plaintiffs' Service Award shall

¹ The Parties intend for Rule 6 of the Federal Rules of Civil Procedure to apply to the deadlines in this Stipulation.

affect the validity or finality of the Settlement. Plaintiffs and Plaintiffs' Counsel may not cancel or terminate the Settlement Agreement or the Settlement based on this Court's or any other court's ruling with respect to Class Counsel Attorneys' Fees Costs, and Expenses or Plaintiffs' Service Awards

V. CLAIMS ADMINISTRATION COSTS AND EXPENSES

1. The Settlement Administrator's Costs and Expenses. All costs and expenses due to the Settlement Administrator in connection with its administration of the Settlement, including, but not limited to, providing the Class Notice, locating Class Members, processing Opt-Out Requests, and calculating, administering, and distributing settlement payments to the Class Participants, shall be paid from the Gross Settlement Amount. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs incurred in the administration of the Settlement.

2. Payment by Defendant of Gross Settlement Amount. Within fourteen (14) days after the Effective Date, Defendant will remit the Gross Settlement Amount to the Administrator by wire transfer. Upon receipt by the Settlement Administrator, these funds shall be transferred immediately to a Qualified Settlement Fund satisfying the requirements of Treasury Regulation Section 1.468B-1 (Section 1.468B-1). The Settlement Administrator shall provide Defense Counsel with an escrow agreement within 7 days of Preliminary Approval. The Settlement Administrator shall provide Defense Counsel with a Section 1.468B-1 Relation Back Election that meets the requirements of Section 1.468B-1(j)(2) within 7 days after receipt of the funds. Defendant shall review and, if acceptable, execute and return this document to the Settlement Administrator, to the extent necessary, which shall be affixed to the initial tax return of the Qualified Settlement Fund in order to establish the start date of the Qualified Settlement Fund. Except for any costs associated with distribution of Settlement Notice, the entire Gross

Settlement Amount, plus any interest earned on the Gross Settlement Amount, shall be refunded to Defendant if the Settlement does not obtain Final Approval or otherwise does not become Final, or the Effective Date does not occur.

3. **Settlement Administrator Agreement.** The parties agree that the agreement with the Settlement Administrator shall contain an indemnity and hold harmless agreement, subject to Defendant's approval, which shall not be unreasonably withheld, indemnifying Defendant and holding harmless Defendant from any claims or liability arising from the Settlement Administrator's actions.

VI. **NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

1. **The Settlement Administrator.** The Settlement Administrator will be responsible for locating correct addresses for the Class Members, mailing the Class Notice to Class Members, handling inquiries from Class Members concerning the Class Notice or any other issue, preparing, administering and distributing settlement checks to Class Participants, and performing such other duties as the Parties may direct.

The Settlement Administrator will create a website for the Settlement, which will allow Class Members to view the Class Notice (in generic form), this Settlement Agreement, and all papers filed by Class Counsel to obtain preliminary and final approval of the Settlement Agreement. Additionally, the Settlement website will provide contact information for Class Counsel and the Settlement Administrator. The Settlement Administrator will provide Class Counsel and Defendants' counsel with a preview of the proposed website. Class Counsel and Defendants' counsel must approve the website before it goes live and also must approve any modifications to the website. The Settlement Administrator shall also create a toll-free telephone number to field telephone inquiries from Class Members during the notice and settlement administration periods. The Settlement Administrator will be

directed to take the website and call center down after the 180-day check cashing period referenced in Section VII.9. The Settlement Administrator will be required to abide by and incorporate all confidentiality parameters agreed to by the parties and approved or ordered by the Court.

On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense Counsel updating them as to the number of validated and timely received Opt-Out Requests as well as any objections submitted by Class Members. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt-Out Requests, challenges, objections, rescissions of Opt-Out Requests and withdrawal of objections no later than 7 days after their receipt. The Settlement Administrator will provide Class Counsel with a declaration of due diligence and proof of mailing of the Class Notice and the Opt-Out Requests, which Class Counsel will file with the Court no later than 7 days prior to the Court's Final Approval and Fairness Hearing. No later than 10 days following the Opt-Out Deadline, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a final report with information regarding (a) the final pro rata portion of the Individual Settlement Amount for each Class Participant and (b) the final number of Opt-Outs.

All costs and expenses of the Settlement Administrator for administration of the Settlement shall be paid from the Gross Settlement Amount as part of the Administrative Expenses.

2. Notice to Class Members. Notice shall be provided to Class Members in the following manner: Within 14 days of the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an updated list containing names, Social Security numbers, last-known addresses and phone numbers, and weeks worked information including: (a) total weeks during which each Class Member performed any work for Defendant in the United States of America during

the Oklahoma Class Period (Oklahoma Workweeks), and (b) total weeks during which each FLSA Collective Member performed any work for Defendant in the United States of America during the Collective Period (FLSA Workweeks) (collectively, the Class Information). The Settlement Administrator shall send Class Counsel and Defense Counsel a summary of the Class Information in anonymized form. Within 28 days of the Preliminary Approval Date, the Settlement Administrator shall send each Class Member the Class Notice via first-class, United States mail. The Class Notice shall also contain an easily understood statement alerting the Class Members that, by participating in the Settlement, the Class Member is releasing and waiving all Released Claims against Defendant. In addition to other information contained on the Class Notice, the Class Notice shall state the estimated minimum payment the Class Member is expected to receive assuming full participation of all Class Members.

Any returned envelopes containing the Class Notice from this mailing with forwarding addresses will be used by the Settlement Administrator to locate Class Members. In the event that, prior to the Opt-Out Deadline, any Class Notice mailed to a Class Member is returned to the Settlement Administrator as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s) or FLSA Collective Member(s), and a second/follow-up Class Notice will be sent to any new or different address obtained.

It will be conclusively presumed that, if an envelope containing the Class Notice has not been returned within 28 days of the mailing, the Class Member received the Class Notice. At least 7 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing (Declaration) regarding the mailing of the Class Notice and its attempts to locate Class Members.

The Declaration shall specify the number of Class Members to whom Class Notices were sent and the number of Class Members to whom Class Notices were not delivered. Class Counsel shall file this Declaration with the Court.

3. Release Language on Settlement Checks. The Settlement Administrator shall include the following release language on the back of each Settlement Award check: “This check is your settlement payment in connection with the court-approved class action Settlement in Beissel, et al. v. Western Flyer Express, LLC, CIV-21-903-R. By not opting out of the Settlement, you have released Western Flyer Express and other Releasees of claims under Oklahoma and Federal law as defined in the Settlement Agreement. When you sign or cash you’re enclosed check, you affirmatively consent to join the Class Action/Collective Action and confirm your release of claims under the Fair Labor Standards Act against Releasees.”

4. Opt-Out Procedure. Class Members need not submit claims in order to receive a settlement payment. Class Members, other than Plaintiff, who wish to exclude themselves from the Settlement (“Opt-Out”) must mail to the Settlement Administrator a written statement indicating that they do not wish to participate in or be bound by the Settlement (“Opt-Out Request”). The written Opt-Out Request must contain the Class Member’s full name, address, telephone number, email address (if applicable), and last four digits of their social security number, and must be signed individually by the Class Member. No Opt-Out Request may be made on behalf of a group. Opt-Out Requests must be made by individuals or owners of independent businesses operating in the transportation industry. An Opt-Out Request must be post-marked within 60 days of the Class Notice being mailed by the Settlement Administrator (Opt-Out Deadline). Any Opt-Out Requests received after the Opt-Out Deadline will be invalid. None of the Parties, their counsel, nor

any person on their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves from the settlement.

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

5. Objections. The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement must file with and deliver a written objection to the Court and serve copies of the written objection to Class Counsel and Defense Counsel no later than the Opt-Out Deadline. The date of delivery of the written objection is deemed to be the date the objection is deposited in the U.S. mail, postage prepaid, as evidenced by the postmark. If postmark dates differ, the later of the two postmark dates will control. The objection must include the objector's name, address, telephone number, email address (if applicable), and the case name and number, and must set forth, in clear and concise terms, a statement of the reasons why the objector believes the Court should find the Settlement is not in the best interest of the Class Members and the reasons why the Settlement should not be approved, including reasonably legible legal and factual arguments supporting the objection. The Class Notice shall advise Class Members that objections shall only be considered if the Class Member has not opted out of the Settlement; in other words, to file an objection, the Class Member must be a Class Participant. No Class Participant shall be entitled to be heard at the Final Approval Hearing (whether individually or through counsel), unless written notice of the Class Participant's intention to appear at the Final Approval Hearing has been filed with the Court and served upon Class Counsel and Defense Counsel

on or before the Opt-Out Deadline. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through an attorney, he or she must also file a notice of his/her intention to appear at the same time as the objection is filed. Copies of any objection or notice of intention to appear must be simultaneously served on Class Counsel and Defense Counsel. Unless otherwise ordered by the Court, Class Participants shall not be entitled to speak at the Final Approval and Fairness Hearing unless they have submitted a timely written objection and notice of intention to appear in conformity with this Section. Class Participants who fail to make timely written objections in the manner specified above shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. However, the requirement that the Class Participant submit a written objection may be excused by the Court upon a showing of good cause. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to object to the settlement, or appeal from any order of the Court that is consistent with the terms of this Settlement. Class Participants who have properly and timely submitted objections may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own expense.

If the Court determines the Settlement, including but not limited to the awards of Class Counsel Attorneys' Fees, Costs, and Expenses, and Plaintiffs' Service Award, is fair, adequate, and reasonable to the Class as a whole, then the Court, in its sole discretion, and as allowed under Tenth Circuit law, may require any objecting Class Member or FLSA Collective Member, as a prerequisite to pursuing an appeal, to put up a cash bond in an appropriate amount.

If an objector intends to appear and request permission to speak at the Final Fairness Hearing, either in person or through counsel, and complies with the

applicable provisions in this Section, then the objector must also provide, in addition to the information required above:

- (i) A list of any witnesses the objector wishes to call at the Final Fairness Hearing, together with a brief summary of each witness's expected testimony (to the extent the objector desires to offer expert testimony and/or an expert report, any such evidence must fully comply with the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the Local Rules of the Court);
- (ii) A list of and copies of any exhibits, including demonstrative exhibits, the objector may seek to use at the Final Fairness Hearing; and
- (iii) A list of any legal authority the objector may present at the Final Fairness Hearing.

Any Class Member of FLSA Collective Member who fails to timely file such written statement and provide the notice, information and exhibits set forth in this Section, will not be permitted to present any objections at the Final Fairness Hearing and such failure will render any such attempted objection void, untimely, and of no effect. All presentations of objections will be further limited by the information listed. A Class Member's or FLSA Collective Member's mere compliance with the foregoing requirements does not in any way guarantee the ability to present evidence or testimony at the Final Fairness Hearing. The decision whether to allow any testimony, argument, or evidence, as well as the scope and duration of any and all presentations of objections at the Final Fairness Hearing, will be determined in the sole discretion of the Court.

6. Disputes. To the extent any Class Member disputes the number of Oklahoma Workweeks that Class Member reportedly worked during the Oklahoma

Class Period, for members of the Oklahoma Class, or any FLSA Collective Member disputes the number of FLSA Workweeks reportedly worked during the FLSA Collective Period, as shown in his or her Class Notice, such Class Member or FLSA Collective Member may produce evidence to the Settlement Administrator establishing the Oklahoma Workweeks for the Oklahoma Class, or the FLSA Workweeks for the FLSA Collective. The deadline for Class Members or FLSA Collective Members to submit disputes pursuant to this paragraph is the Opt-Out Deadline. Unless the Class Member or FLSA Collective Member presents evidence proving he or she worked more workweeks than shown by Defendant's records, his/her Individual Settlement Amount will be determined based on Defendant's records. The Settlement Administrator shall notify counsel for the Parties of any disputes it receives. Defendant shall review its records and provide further information to the Settlement Administrator, as necessary to clear the objection up to the extent such information exists in Defendant's reasonably accessible records. The Settlement Administrator shall provide a recommendation to counsel for the Parties in which the Settlement Administrator shall state whether the original number of Oklahoma Workweeks for the Oklahoma Class or FLSA Workweeks for the FLSA Collective credited to the Class Member and/or FLSA Collective Member should stay the same or should change and the proposed changes. Counsel for the Parties shall then meet and confer in an effort to resolve the dispute. If the Parties cannot resolve the dispute, they shall present it to the Court for resolution. The Settlement Administrator will notify the disputing Class Member or FLSA Collective Member of the decision.

7. **Notice of Settlement to Federal Officials.** Within 14 days of receiving notice of filing of a Motion for Preliminary Approval of this Stipulation, Defendant shall serve the CAFA Notice of this Stipulation on the appropriate federal and state officials, as required by 28 U.S.C. § 1715(b).

VII. SETTLEMENT DISTRIBUTION

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

2. Allocation of the Gross Settlement Amount. The claims of all Class Members are settled for the Gross Settlement Amount of \$4,900,000, which will be allocated as follows:

- a. The Administrative Expenses.
- b. Class Counsel's attorneys' fees, costs, and expenses, as approved by the District Court.
- c. Plaintiff's Service Award, as approved by the District Court.
- d. The Net Settlement Amount, which shall be allocated and distributed among the Class Participants.

3. Calculation of the Individual Settlement Amounts. Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. Class Participants shall receive a pro rata portion of the Net Settlement Amount as follows:

- a. When calculating the Individual Settlement Amounts for purposes of the Class Notice, the Settlement Administrator will assume that each individual listed on the Class Information list is a Class Participant. When calculating the Individual Settlement Amounts to Class Participants following Final Approval (for purposes of preparing Individual Settlement Amount checks), the Settlement Administrator will assume Class Participants will cash their Individual Settlement Amount checks; but will exclude Class Members who validly Opt-Out of the Settlement.
- b. Class Participants shall be eligible to receive a pro rata portion of the Net Settlement Amount based on the number of settlement shares they

are assigned. The Class Administrator shall assign settlement shares as follows:

- i. FLSA Collective Members will receive 1 settlement share for each FLSA Workweek between December 7, 2017 to December 31, 2021 as compensation for claims under the FLSA.
- ii. Oklahoma Class Members will receive 2 settlement shares for each Oklahoma Workweek between December 7, 2017 to December 31, 2021 as compensation for claims under Oklahoma law.

c. The total number of settlement shares for all Class Participants will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Class Participant's number of settlement shares to determine the Class Participant's pro rata portion of the Net Settlement Amount.

d. All Individual Settlement Amount determinations shall be based on Defendant's records. If the Parties determine, based upon further review of available data, that a person previously identified as being a Class Member is not a Class Member, or an individual who was not previously identified as a Class Member is in fact a Class Member but was not so included, the Settlement Administrator shall promptly make such addition or deletion as appropriate.

4. Time for Payment of Attorneys' Fees, Costs, and Expenses to Class Counsel. The Settlement Administrator shall make every effort to mail, by first-class United States mail to the last-known address, any attorneys' fees, costs, and expenses awarded to Class Counsel no later than 14 days after, the Effective Date. If the Court approves an attorneys' fee award and/or Class Counsel's costs in amounts less than what Class Counsel requests, the reduction in the attorneys' fee

award and/or Class Counsel's costs shall not be a basis for nullification of this Settlement. Nor shall a reduction in the attorneys' fee award and/or Class Counsel's costs in any way delay or preclude dismissal with prejudice after approval of the Settlement, or the Settlement from becoming effective. An IRS Form 1099 shall be provided to Class Counsel for the payments made to Class Counsel. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them.

5. Time for Payment of Service Award to Plaintiff. The Settlement Administrator shall make every effort to mail, by first-class United States mail to the last-known address, the Service Award to Plaintiff no later than 14 days after, the Effective Date. The Settlement Administrator shall issue an IRS Form 1099 for these payments. If the Court approves a Service Award in an amount less than what Plaintiff requests, the reduction in the Service Award shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Service Award in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming effective.

6. Time for Payment of Administrative Expenses to the Settlement Administrator. The Settlement Administrator shall pay itself all costs and expenses pursuant to Article VI, Section 1 of this Stipulation within 14 days of the Effective Date or the completion of its duties under this Stipulation, whichever is later.

7. Time for Payment of Individual Settlement Amounts. The Settlement Administrator shall make every effort to mail, by first-class United States mail to the last-known address, payment of the Individual Settlement Amounts to each Class Participant no later than 14 days after the Effective Date.

If the Settlement Administrator is unable to mail the Individual Settlement Amounts to Class Participants within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date by

which the Individual Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to Class Participants until all Individual Settlement Amounts have been considered, calculated, and accounted for, and the obligations set forth in Sections 4, 5, and 6 have been satisfied. In the event that any Class Participant is deceased, payment shall be made payable to the estate of that Class Participant and delivered to the executor or administrator of that estate.

Within 14 days of mailing the Individual Settlement Amounts to Class Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel and Defense Counsel a declaration of payment.

Within 90 days of mailing the Individual Settlement Amounts to Class Participants, a reminder letter will be sent via U.S. mail to Class Participants who have not yet cashed their Individual Settlement Amounts, and during the last 60 days of the check cashing period, a call will be placed to Class Participants that have still not cashed their check to remind them to do so.

8. Non-Cashed Settlement Checks. Each Class Participant must cash or deposit his or her Individual Settlement Amount check within 180 days after the checks are mailed to them. Any amounts not redeemed or deposited within 180 days of mailing will first be redistributed to Class Participants on a prorated basis as provided for in Section VII.3. The additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed checks prior to the redistribution, and Class Participants will have 180 days to redeem or deposit their redistributed checks. Following this redistribution, any remaining funds will be paid via *cy pres* in equal portions to: (1) St. Christopher Truckers Relief Fund, (2) Meals for 18 Wheels, and (3) Truckers Final Mile. In such event, the Class Participant will remain bound by the Settlement. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Participant at his or her correct address.

9. **Extension of Time to Pay and/or Process Individual Settlement Amounts.** Should the Settlement Administrator need more time than is provided under this Stipulation to complete any of its obligations, the Settlement Administrator may request, in writing, such additional time (including an explanation of the need for additional time) from Class Counsel and Defense Counsel. If Class Counsel and/or Defense Counsel do not agree, in writing, to the Settlement Administrator's request for additional time, the Settlement Administrator may seek such additional time from the Court.

10. **No Claim Based Upon Distributions or Payments in Accordance with this Stipulation.** No person shall have any claim against Defendant, Class Counsel, or Defense Counsel based on distributions or payments made in accordance with this Stipulation.

VIII. NULLIFICATION OF THIS STIPULATION AND CONDITIONAL CERTIFICATION

1. **Non-Approval of the Stipulation.** If (a) the Court fails to approve any material term of this Stipulation, or (b) the Court should for any reason fail to enter a judgment and dismissal with prejudice of the Claims, or (c) the judgment and dismissal is reversed, modified, or declared or rendered void, then the Settlement shall be considered null and void, and neither the Settlement nor any of the related negotiations or proceedings shall have any force or effect, and all parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.. Notwithstanding the foregoing, the Parties must attempt in good faith to cure any perceived defects in the Stipulation to facilitate approval.

2. **Defendant's Right to Void Settlement.** Defendant shall have the option to void the Settlement if 10% or more of the Class Members Opt-Out of the Settlement. In the event 10% or more of the Class Members Opt-Out of the

Settlement, Defendant may either (a) void the entire Agreement, or (b) exercise the right to seek a reduction in the the Gross Settlement Amount in a pro rata portion to the number of Opt-Outs.

3. Invalidation. Invalidation of any material portion of the Settlement shall invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in full force and effect, or the Parties reach agreeable alternative terms, reduced to writing.

4. Stay upon Appeal. In the event of a timely appeal from the judgment and dismissal, the judgment shall be stayed, and none of the Gross Settlement Amount shall be distributed to Class Participants, Plaintiff, or Class Counsel, and the actions required by this Stipulation shall not take place until all appeal rights have been exhausted by operation of law.

IX. COURT APPROVAL PROCESS

1. Amended Complaint. No more than 14 days after this Stipulation of Settlement is fully executed, the Parties will stipulate to the filing of a Second Amended Complaint, and Plaintiff will file a Second Amended Complaint. Defendant shall have the right to review and comment on the Second Amended Complaint. Plaintiff will submit the proposed Second Amended Complaint for Defendant's review no later than 10 days after this Stipulation of Settlement is fully executed. The Second Amended Complaint will include the following factual allegations and claims for relief: (1) Claims for unpaid wages under the FLSA, and allegations relating to the same, as well as allegations that Defendant misclassified Class Members as independent contractors; and(2) Claims and allegations of Forced Labor and Federal Trafficking under Title 18 of U.S. Code Section 1581 *et seq.* pertaining to debt servitude and/or peonage and involuntary servitude;

2. Preliminary Approval. Class Counsel will submit this Stipulation to the Court and request preliminary approval of the Settlement within 30 the full and

complete execution of this Stipulation of Settlement. If preliminary approval of this Settlement is not granted by the District Court, the Action will proceed as if the parties had not entered into this Stipulation.

3. Final Approval. Class Counsel will request final approval of the Settlement no later than 30 days after the Opt-Out Deadline. The Final Approval and Fairness Hearing shall be held in the U.S. District Court for the Western District of Oklahoma, approximately 120 days after the District Court grants preliminary approval, on a date to be determined by the District Court.

4. Dismissal with Prejudice of the Action. The Claims shall be dismissed with prejudice as part of the consideration for the Settlement. Notwithstanding the dismissal of the Claims with prejudice, the Court shall retain jurisdiction to interpret and enforce this Stipulation.

At the Final Approval and Fairness Hearing, Class Counsel and Defense Counsel shall jointly request the Court for the entry of the final order approving the Settlement as being fair, reasonable, and adequate to the Class Participants within the meaning of Fed. R. Civ. P. 23(c) and under the FLSA, and for the entry of a final judgment of dismissal with prejudice of the Claims consistent with the terms of the Settlement. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

X. RELEASES AND WAIVERS

1. Release of Claims by Class Participants. Upon the Effective Date, the Class Participants and Plaintiff each release the Released Parties, and each of them, of and from any and all of the Released Claims.

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge the disputes and claims relating to the Released Claims asserted in this Action against Defendant, whether known or unknown, liquidated or unliquidated. All Class Participants and Plaintiffs expressly waive all claims that were pled in the

Complaint, Amended Complaint, or the Second Amended Complaint, as well as claims that could have been pled in those Complaints based on the factual allegations contained therein. As such, the Class Participants and Plaintiff understand and agree that they are providing the Released Parties with a full and complete release with respect to the Released Claims.

This Stipulation is intended to include within its effect any and all claims, damages, causes of action, and claims for attorneys' fees, costs, and expenses relating to the Released Claims asserted in the Action, and that, subject to the terms and conditions of this Stipulation and upon Final Approval of this Stipulation, all such claims, damages, causes of action, and claims for attorneys' fees, costs, and expenses that were or could have been asserted in the Action are deemed to be fully and finally resolved and are to be dismissed, with prejudice, as to each and every Class Participant and Plaintiffs.

Each Class Participants and Plaintiffs will be bound to the release of the Released Claims as a result of the Settlement and to the dismissal of the Claims, with prejudice.

2. Release of Claims by Plaintiffs. Plaintiffs, in exchange for receipt of a Service Award approved by the Court, on behalf of themselves and their heirs, executors, administrators, and representatives, shall and does hereby forever release, discharge and agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees, costs, and expenses), known or unknown, at law or in equity, which he may now have or may have at any time prior to the Effective Date, against Defendant arising out of or in any way connected with his alleged employment with Defendant, his contracts with Defendant, including claims alleged in the Complaint, and any and all transactions, occurrences, or matters between the

Parties occurring prior to the Preliminary Approval Date. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans with Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as amended; (f) the Equal Pay Act; (g) the Employee Retirement Income Security Act, as amended; (h) the Consolidated Omnibus Budget Reconciliation Act; (i) the Rehabilitation Act of 1973; (j) the Family and Medical Leave Act; (k) the Civil Rights Act of 1966; (l) the Fair Labor Standards Act; (m) all Truth-in-Leasing claims that were alleged, inferred, pled or could have been pled under 49 U.S.C. § 14102 and 49 C.F.R. §§ 376.11 and 376.12; and (n) any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorneys' fees, costs, and expenses, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Defendant and the Released Parties from any and all claims for attorneys' fees, costs, and expenses arising out of the matters released in this Agreement.

Plaintiffs may hereafter discover facts in addition to or different from those which he now knows or believes to be true with respect to the subject matter of the Released Claims and all the claims referenced herein, but stipulates and agrees that,

upon the Effective Date, Plaintiffs shall and hereby do fully, finally and forever settle and release any and all claims against Defendant and the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist or heretofore may have existed upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts.

Plaintiffs also agree that, to the extent permitted by law, if a claim is prosecuted in either of their names against any of the Released Parties before any court or administrative agency prior to the Effective Date, they waive, and agree not to take, any award of money or other damages from such proceeding. Plaintiffs agree that, unless otherwise compelled by law, if a claim is prosecuted in either of their names against any of the Released Parties, they will immediately request in writing that the claim on their behalf be withdrawn.

3. Release of Monetary Claims. Subject to Court approval, the Parties agree that Defendant will release any and all known and unknown monetary claims it may or does have against Class Participants for outstanding debts, reimbursements, chargebacks, deposits, or other amounts.

XI. DUTIES OF THE PARTIES

1. Mutual Full Cooperation. The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including all reasonable efforts contemplated by this Stipulation and any other efforts that may become necessary by court order, or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take

all necessary and reasonable steps to secure the Court's final approval of this Stipulation.

2. **Duty to Support and Defend the Settlement.** The Parties hereto agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

XII. MISCELLANEOUS PROVISIONS

1. **No Prior Assignments.** The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein released and discharged except as set forth herein.

2. **Non-Admission.** Nothing in this Stipulation shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, the FLSA Collective Members, or any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, the FLSA Collective Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a class, collective or representative action other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each and every material factual allegation and alleged claim asserted in the Action. To this end, the Settlement of the Action, the negotiation and execution of this Stipulation, and all acts performed or documents

executed pursuant to or in furtherance of this Stipulation or the Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal.

3. Confidentiality. Plaintiffs and Defendant, and their respective counsel, recognize and accept that the Parties to this Stipulation desire that the terms of this Stipulation, the fact of the Settlement embodied in this Stipulation, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including the informal discovery proceedings therein and the mediation conducted by the parties, and evidence obtained during the course of the Action, shall not be discussed with or presented to the media. Neither Plaintiff nor Class Counsel shall issue any press release related to the Settlement. Plaintiff and Class Counsel agree that, prior to preliminary approval of the Settlement, they will keep the terms of the Settlement confidential except for purposes of communicating with Plaintiffs only. Plaintiffs shall also be informed that the Settlement is confidential and shall be advised to keep the Settlement confidential. After preliminary approval of the Settlement, Plaintiffs and Class Counsel may: (a) as required by law; (b) as required under the terms of this Stipulation; or (c) as required under counsel's duties and responsibilities as Class Counsel, comment regarding the specific terms of the Settlement. In all other cases, Plaintiff and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the worldwide web), to say the Action has been resolved and that Plaintiff and Class Counsel are satisfied with the Settlement terms.

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

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

6. **Governing Law.** This Stipulation is intended to and shall be governed by the laws of the State of Oklahoma, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

7. **Notices.** Except for Class Member notices required to be made by the Settlement Administrator and the CAFA Notice, any and all notices or other communications required or permitted under this Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their counsel or if sent to the party without counsel by United States certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the party appearing in this Stipulation.

8. **Captions and Interpretations.** Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Stipulation or any provision thereof.

9. **Modification.** This Stipulation may not be changed, altered, or modified, except in writing signed by the Parties and approved by the Court. This

Stipulation may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

10. Integration Clause. This Stipulation contains the entire agreement between the Parties relating to the Settlement of the Action and the transactions contemplated thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby superseded.

11. Successors and Assigns. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent or holding companies, subsidiaries, affiliates of all kinds and degrees, related companies, joint ventures, predecessors, successors, and assigns.

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

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

14. Execution in Counterparts. This Stipulation shall become effective upon its execution by all of the undersigned. The Parties may execute this Stipulation

in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

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

16. **Action to Enforce Agreement.** In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover attorneys' fees, costs, and expenses.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the date below their signatures or the signature of their representatives. The date of the Stipulation shall be the date of the latest signature.

ANDREW BEISSEL



Dated: 04 / 26 / 2023

WESTERN FLYER EXPRESS, LLC

By: 

Randy Timms, CEO
Printed Name and Title

Dated: 04 / 25 / 2023

J&B ENTERPRISES, INC.

By: 

Andrew Beissel President

Printed Name and Title

Dated: 04 / 26 / 2023

c/o SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608

APPROVED AS TO FORM AND CONTENT

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MCAFEE & TAFT, APC

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By: 
Christopher M. Scaperlanda

Dated: 4/26/2023

Dated: 4/26/23

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