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26 GROUP, INC.) and RYDER SYSTEM, INC.

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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

29 JOSEPH KIMBO, an individual; on behalf of  
30 himself and all others similarly situated,

31 Plaintiff,

32 vs.

33 MXD GROUP, INC., a California corporation;  
34 RYDER SYSTEM, INC., a Florida Corporation;  
35 and DOES 1 through 10, inclusive,

36 Defendants.

CASE NO. 2:19-CV-00166-WBS-KJN

**CLASS ACTION SETTLEMENT  
AGREEMENT**





1 full and complete release of all PAGA claims, the amount shall be deducted  
2 from the Gross Settlement Amount.

- 3 • Class Counsel may seek attorneys' fees of up to One Million Two Hundred  
4 and Fifty Thousand Dollars and No Cents (\$1,250,000.00), which is twenty-  
5 five percent (25%) of the Gross Settlement Amount and costs of up to Twenty  
6 Thousand Dollars and No Cents (\$20,000.00), which Defendants shall not  
7 oppose.

### 8 DEFINITIONS

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

11 3. "Civil Action" means the lawsuit filed against Defendants in the case styled *Joseph*  
12 *Kimbo, et al. v. MXD Group, Inc., et al.*, United States District Court for the Eastern District of  
13 California, Case No. 2:19-CV-00166-WBS-KJN.

14 4. "Class", "Classes", "Class Member" or "Class Members" means all Motor Carrier  
15 Class Members and all Non-Carrier Class Members. The Class excludes Motor Carrier Class  
16 Members and Non-Carrier Class Members that only performed delivery services at the warehouse  
17 located at 21508 Baker Parkway, City of Industry, California 91789 during the Class Period.

18 5. "Class Counsel" means Joshua Konecky, Leslie H. Joyner, and Nathan B. Piller at  
19 Schneider Wallace Cottrell Konecky LLP.

20 6. "Class Period" means December 12, 2014 through the earlier of preliminary approval  
21 or July 26, 2020.

22 7. "Class Representative" or "Plaintiff" means plaintiff Joseph Kimbo.

23 8. "Complaint" means the complaint filed on December 12, 2018 in the Sacramento  
24 County Superior Court, styled *Joseph Kimbo, an individual on behalf of himself and all others*  
25 *similarly situated v. MXD Group, Inc., et al.* in the Sacramento County Superior Court Case No. 34-  
26 2018-00246338, and thereafter removed to the United States District Court for the Eastern District of  
27 California Case No. 2:19-CV-00166-WBS-KJN.

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1           9.       “Court” means the United States District Court for the Eastern District of California.

2           10.       “Defendants” means Defendants Ryder Last Mile, Inc. (f/n/a MXD Group, Inc.) and  
3 Ryder System, Inc.

4           11.       “Defense Counsel” means Mara D. Curtis and Brittany M. Hernandez of Reed Smith  
5 LLP.

6           12.       “Effective Date” means the first date upon which all of the following events have  
7 occurred:

8               (i)       this Agreement has been executed by all Parties and by Class Counsel and  
9               Defense Counsel;

10              (ii)       the Court has preliminarily approved the Settlement;

11              (iii)       notice has been properly given to Class Members;

12              (iv)       the Court has held a Final Fairness and Approval Hearing and entered the  
13              Final Order and Judgment approving the Settlement; and

14              (v)       in the event no appeal is filed, then thirty (30) days after the entry of the Final  
15              Order and Judgment, or, if an appeal is filed, upon the final dismissal of the  
16              appeal, writ or other appellate proceeding opposing this Agreement. In this  
17              regard, it is the intention of the Parties that the Settlement shall not become  
18              effective until the Court’s order approving the Settlement has become  
19              completely final, and there is no timely recourse by an appellant or objector  
20              who seeks to contest the Settlement.

21           13.       “Final Fairness and Approval Hearing” means the hearing to be requested by Plaintiff  
22 and conducted by the Court after the filing by Plaintiff of an appropriate motion and following  
23 appropriate notice to Class Members giving Class Members an opportunity to opt out from the Class  
24 and Settlement or to object to the Settlement, at which time Plaintiff shall request that the Court  
25 finally approve the fairness, reasonableness and adequacy of the terms and conditions of the  
26 Settlement, enter the Final Order and Judgment, and take other appropriate action.

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1           14.     “Final Order and Judgment” means the order and judgment to be issued and entered  
2 by the Court upon granting final approval of the Settlement and this Agreement as binding upon the  
3 Parties and the Settlement Class Members who do not properly and timely submit a written Opt Out,  
4 substantially in the form attached as **Exhibit 3**, or as subsequently modified with the approval of  
5 counsel for all Parties.

6           15.     “Gross Settlement Amount” means the maximum amount of Five Million Dollars  
7 and No Cents (\$5,000,000.00) (not including the employer’s share of payroll taxes on the portion of  
8 the Individual Settlement Payments that constitute payments for alleged wage claims, which shall be  
9 submitted by Defendants to the Settlement Administrator in addition to the Gross Settlement  
10 Amount), that Defendants shall be required to pay under this Agreement, which shall be inclusive of  
11 all Individual Settlement Payments to Settlement Class Members, PAGA Payment Shares to the  
12 PAGA Group, Reserve Fund, attorneys’ fees and costs, Settlement Administration Costs, Service  
13 Award to the Class Representative, and payment to the California Labor Workforce Development  
14 Agency (“LWDA”) pursuant to the California Labor Code Private Attorneys General Act of 2004  
15 (“PAGA”), and employees’ share of payroll taxes on any portion of the Individual Settlement  
16 Payments to the Settlement Class Members that constitute wages.

17           16.     “Individual Settlement Payment” means the gross amount that shall be paid to each  
18 Settlement Class Member based on the distribution formula described in paragraph 81 below. If a  
19 Class Member is also in the PAGA Group, then the individual shall also receive a PAGA Payment  
20 Share.

21           17.     “Initial Distribution” means within thirty (30) days of the Effective Date, Settlement  
22 Class Members will be mailed checks for their Individual Settlement Payments and PAGA Payment  
23 Shares, if applicable, and checks shall remain negotiable through the Check Cashing Deadline as  
24 described in paragraphs 88-89 below.

25           18.     “Motor Carrier Class Member” or “Motor Carrier Class Members” means the owners  
26 of all motor carriers that directly contracted with Defendants in their individual capacity or through a  
27 business entity and provided transportation services to Defendants in California at any time from  
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1 December 12, 2014 through March 9, 2020. Motor Carrier Class Members includes (1) all motor  
2 carrier owners responsible for the day-to-day operations of their businesses that engaged one or more  
3 workers to operate their commercial motor vehicles to deliver goods; and (2) all motor carrier  
4 owners that also performed delivery services as the driver of their commercial motor vehicles.

5 19. “Net Settlement Amount” means the amount of money remaining after Class  
6 Counsel’s attorneys’ fees, costs and expenses, any Service Award to the Class Representative,  
7 settlement administration costs and expenses, PAGA Payment, and Reserve Fund.

8 20. “Non-Carrier Class Member” or “Non-Carrier Class Members” means all individuals  
9 who did not contract with Ryder Last Mile, Inc. (f/k/a MXD Group, Inc.) and are non-owner drivers  
10 and helpers authorized to provide transportation services for Defendants in California at any time  
11 from December 12, 2014 through March 9, 2020. Non-Carrier Class Members includes drivers and  
12 helpers engaged by motor carrier companies to operate their commercial motor vehicles and perform  
13 delivery services for Defendants in connection with contracts Defendants had with the owners of the  
14 motor carrier companies.

15 21. “Notice of Class Action and PAGA Settlement” or “Notice” means the form attached  
16 hereto as **Exhibit 1** or whichever form is approved by the Court that shall be mailed to the Class  
17 Members to inform them of the terms of this Agreement and their rights and options related thereto.  
18 Upon approval by the Court, the Settlement Administrator shall translate the Notice of Class Action  
19 and PAGA Settlement into Spanish, and both the English and Spanish versions shall be mailed to the  
20 Class Members.

21 22. “Objection” means a Class Member’s written objection to the Settlement. Any  
22 Objection shall be in the form described in paragraphs 76-78 below.

23 23. “Opt Out” means a written request that a Class Member may submit to be excluded  
24 from the Class and the Settlement. Any Opt Out shall be in the form described in paragraph 72  
25 below.

26 24. “PAGA Group”, “PAGA Group Member” or “PAGA Group Members” means all  
27 PAGA Motor Carrier Group Members and all PAGA Non-Carrier Group Members. The PAGA  
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1 Group excludes PAGA Motor Carrier Group Members and PAGA Non-Carrier Group Members that  
2 only performed delivery services at the warehouse located at 21508 Baker Parkway, City of  
3 Industry, California 91789 between August 16, 2017 to March 9, 2020.

4 25. “PAGA Letter” means the notice of alleged Labor Code violations that Joseph Kimbo  
5 caused to be sent to the LWDA pursuant to Labor Code Section 2699.3(l) on or about August 16,  
6 2018.

7 26. “PAGA Motor Carrier Group Members” means all Motor Carrier Class Members  
8 who provided transportation services to Defendants in California at any time from August 16, 2017  
9 through March 9, 2020.

10 27. “PAGA Non-Carrier Group Members” means all Non-Carrier Class Members who  
11 provided transportation services for Defendants in California at any time from August 16, 2017  
12 through March 9, 2020.

13 28. “PAGA Payment” means the amount that the Parties have agreed to pay to the  
14 California Labor and Workforce Development Agency (“LWDA”) and the PAGA Group in  
15 connection with the California Labor Code Private Attorneys General Act of 2004, California Labor  
16 Code Sections 2698, *et seq.* (“PAGA”). The Parties have agreed that One Hundred and Fifty  
17 Thousand Dollars and No Cents (\$150,000.00) of the Gross Settlement Amount will be allocated to  
18 the resolution of all claims arising under PAGA. Pursuant to Labor Code Section 2699(i), it shall be  
19 distributed as follows: 25%, or \$37,500, to the PAGA Group and 75%, or \$112,500, to the LWDA.  
20 If it should later be determined by the Court that an additional amount is needed to effectuate a full  
21 and complete release of all Released PAGA Claims, the amount shall be deducted from the Gross  
22 Settlement Amount.

23 29. “PAGA Payment Share” means the gross amount that shall be paid to each PAGA  
24 Group Member for his/her total PAGA Workweeks for Motor Carrier Group Members or total  
25 PAGA Workweeks for Non-Carrier Group Members. The PAGA Payment Share shall be calculated  
26 as described in paragraph 81 below.

27 30. “PAGA Period” means the period between August 16, 2017 through March 9, 2020.  
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1           37.     “Qualifying Motor Carrier Workweeks” means the total number of calendar weeks  
2 that each Motor Carrier Class Member was authorized to provide transportation services to  
3 Defendants in California during the Class Period.

4           38.     “Qualifying Non-Carrier Workweeks” means the total number of calendar weeks that  
5 each Non-Carrier Class Member was authorized to provide transportation services to Defendants in  
6 California during the Class Period.

7           39.     “Released Class Claims” are defined in paragraph 99 below.

8           40.     “Released PAGA Claims” are defined in paragraph 100 below.

9           41.     “Released Parties” means Defendants Ryder Last Mile, Inc. (f/k/a MXD Group, Inc.)  
10 and Ryder System, Inc. and each of their respective present and former parents, affiliates, divisions  
11 and subsidiaries, acquired companies, and each of their respective present and former directors,  
12 officers, shareholders, agents, representatives, employees, partners, attorneys, insurers, predecessors,  
13 successors, assigns, affiliated companies and entities and any individual or entity that could be  
14 jointly liable with any of the foregoing.

15           42.     “Reserve Fund” means an allocation of One Hundred and Twenty-Five Thousand  
16 Dollars (\$125,000.00) from the Gross Settlement Amount that the Parties have agreed to set aside in  
17 order to make payments to individuals who were not originally identified as Class Members, but  
18 who are Class Members and who are identified as Class Members before the Reserve Fund is paid to  
19 the *cy pres* recipient as set forth below. The Parties agree that the Reserve Fund will be maintained  
20 by the Settlement Administrator for sixty (60) days following expiration of the Check Cashing  
21 Deadline set forth in paragraph 89. The Settlement Administrator will distribute any remaining  
22 money in the Reserve Fund not allocated after sixty (60) days following expiration of the check  
23 cashing deadline to St. Christopher’s Fund (<https://truckersfund.org>) as the *cy pres* recipient.

24           43.     “Response Deadline” means the forty-five (45) day period following the date the  
25 Settlement Administrator mails the Notice of Class Action and PAGA Settlement to Class Members  
26 within which any Class Member may: (a) submit a written Opt Out to be excluded from the Class  
27 and this Settlement; (b) submit an Objection; and/or (c) submit Proof of Work documentation.

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1           44.     “Ryder” means defendants Ryder Last Mile, Inc. (f/k/a MXD Group, Inc.) and Ryder  
2 System, Inc.

3           45.     “Service Award” means any payment to the Class Representative for his service to  
4 the Class and his individual release as set forth in paragraph 101, which is in addition to whatever  
5 payments he may otherwise be entitled to as a Settlement Class Member.

6           46.     “Settlement” means the final and complete disposition of the Civil Action as  
7 provided for in this Agreement and all Exhibits hereto.

8           47.     “Settlement Administrator” means Heffler Claims Group LLC.

9           48.     “Settlement Administration Costs” means the reasonable costs and fees of  
10 administration of this Settlement to be paid to the Settlement Administrator from the Gross  
11 Settlement Amount, including, but not limited to: (i) translating into Spanish, printing and mailing  
12 and re-mailing (if necessary) of Notices of Class Action and PAGA Settlement to Class Members;  
13 (ii) preparing and submitting to Settlement Class Members, PAGA Group, and government entities  
14 all appropriate tax filings and forms; (iii) computing the amount of and distributing Individual  
15 Settlement Payments, PAGA Payment Shares, Class Representative Service Award, and Class  
16 Counsel Attorneys’ Fees, Costs and Expenses; (iv) processing and validating Opt Outs; (v)  
17 establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code; and (vi)  
18 calculating and remitting to the appropriate government agencies all employer and employee tax  
19 obligations arising from the Settlement and preparing and submitting filings required by law in  
20 connection with the payments required by the Settlement.

21           49.     “Settlement Class Members” means Plaintiff and all other Motor Carrier Class  
22 Members and Non-Carrier Class Members who do not submit a timely and valid Opt Out under the  
23 process described in paragraph 72 below.

24           50.     “Workweek Payment Rate for the Class Members” means the result derived from the  
25 division of the Net Settlement Amount by the total number of Qualifying Motor Carrier Workweeks  
26 and Qualifying Non-Carrier Workweeks for all Settlement Class Members during the Class Period,  
27 as described in paragraph 81 below.



1 Defendants produced data and information informally requested by Plaintiff to evaluate potential  
2 alleged damages and engage in meaningful settlement discussions, including but not limited to,  
3 routing data for the nine (9) California locations encompassed in the Civil Action. The routing data  
4 indicated that there were approximately 217,787 different routes for the time period from January 7,  
5 2014 through October 9, 2019. The mediation was successful and Plaintiff and Defendants agreed  
6 on the principal terms of a settlement and executed a Memorandum of Understanding (“MOU”) to  
7 memorialize their agreement. The MOU is superseded in all respects by this Agreement upon  
8 execution by Plaintiff and Defendants.

9       56. This Agreement is made in compromise of and embraces all claims against any of the  
10 Released Parties as enumerated in paragraphs 101-102 below, including , but not limited to, all wage  
11 and hour claims, rights, demands, liabilities, causes of action, and theories of liability of every nature  
12 and description, whether known or unknown, that were or could have been alleged against  
13 Defendants or any of the Released Parties arising out of or based on the facts alleged in the  
14 Complaint and PAGA Letter.

15       57. Plaintiff and Defendants enter into this Agreement contingent only upon approval by  
16 the Court. Because the settled matter is a putative class action, this Agreement must receive  
17 preliminary and final approval by the Court. Should the Court, or any other court taking jurisdiction  
18 of this matter, decline to approve all material aspects of the Settlement or make any ruling  
19 substantially altering the material terms of the Settlement, the Settlement shall be voidable and  
20 unenforceable as to Plaintiff and Defendants, at the option of any party. If, but only if, one or more  
21 of the requirements of the immediately preceding sentence is met, any party may exercise his, her or  
22 its option to void this Settlement by giving notice, in writing, to the other Parties and to the Court at  
23 any time before final approval by the Court of this Settlement. For purposes of this provision, the  
24 attorneys’ fees and costs to Class Counsel and the Net Settlement distribution formulas set forth in  
25 paragraphs 79 and 81 below, are not material terms and may be modified by the Parties and/or the  
26 Court if necessary or appropriate to achieve final approval of the Settlement. In the event that the  
27 Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void *ab*

1 *initio* and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any  
2 purpose. Defendants deny all of Plaintiff’s claims and all class and representative claims as to  
3 liability and damages. Defendants expressly reserve all rights to challenge any and all such claims  
4 and allegations upon all procedural and factual grounds, including the assertion of all defenses, if the  
5 Effective Date of the Settlement does not occur. Likewise, Plaintiff expressly reserves all rights to  
6 pursue, amend, dismiss or otherwise dispose of the claims covered under this Settlement, including  
7 but not limited to seeking damages, restitution, fees, expenses, interest and/or any other monetary  
8 amount in excess of the Gross Settlement Amount set forth above for the claims included in the Civil  
9 Action or for any other claims Plaintiff may have against Defendants, in the event the Effective Date  
10 of the Settlement does not occur.

11 58. Plaintiff and Class Counsel have concluded, after taking into account the sharply  
12 disputed factual and legal issues involved in the Civil Action, the risks attending further prosecution,  
13 and the substantial benefits to be received pursuant to settlement as set forth in this Agreement, that  
14 settlement on the terms set forth herein is in the best interest of Plaintiff and the Class, and is fair and  
15 reasonable.

16 59. Similarly, Defendants have concluded, after taking into account the sharply disputed  
17 factual and legal issues involved in the Civil Action, the risks and expense attending further  
18 litigation, and its desire to put the controversy to rest, that settlement on the terms set forth herein is  
19 in their best interest and is fair and reasonable.

20 60. This Settlement contemplates (i) entry of an order preliminarily approving the  
21 Settlement, (ii) distribution of the Notice of Class Action and PAGA Settlement to Class Members,  
22 and (iii) entry of a Final Order and Judgment of the Settlement. The Court shall retain jurisdiction  
23 over the Civil Action and Parties for purposes of enforcing the Settlement and resolving any disputes  
24 relating to the Settlement.

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1 efforts, including all efforts contemplated by this Agreement and any other efforts that may become  
2 necessary by Court order, or otherwise, to effectuate this Settlement and the terms set forth herein.

3 **Notice of Class Action and PAGA Settlement by Mail & Email**

4 64. Delivery of the Class Data. "Class Data" means a complete list of all Class Members  
5 that Defendants will diligently and in good faith compile from their records. The Class Data will  
6 include the following information from Defendants' records all to the extent available: each Class  
7 Member's full name, most recent mailing address and telephone number, social security number,  
8 most recent e-mail address, Qualifying Motor Carrier Workweeks or Qualifying Non-Carrier  
9 Workweeks and PAGA Workweeks for Motor Carrier Group Members or PAGA Workweeks for  
10 Non-Carrier Group Members. Defendants shall provide the Settlement Administrator with the Class  
11 Data no later than thirty (30) calendar days after the Court grants preliminary approval of the  
12 Settlement. The Class Data shall only be used by the Settlement Administrator for the purpose of  
13 calculating the Individual Settlement Payments and PAGA Payment Shares and notifying Class  
14 Members of the Settlement. The Class Data shall be disclosed to Class Counsel only as necessary to  
15 allow them to fulfill their fiduciary duties to the Class and investigate issues that may arise with  
16 respect to payments to be made to Class Members and/or PAGA Group Members, so long as notice  
17 and an opportunity to object is provided to Defendants through their counsel of record. If such  
18 notice is provided to Defendants by the Settlement Administrator and Class Counsel, Defendants  
19 shall have three business day to object to such disclosure. If Defendants object to such disclosure,  
20 counsel for the parties will meet and confer in good faith to resolve the objection. If the objection  
21 cannot be resolved, the dispute will be brought to the Court within five calendar days from the  
22 objection in a joint letter brief not to exceed two pages for resolution. The Class Data shall not be  
23 disclosed to the Class Representative, or any other Class Members or PAGA Group, without written  
24 consent of Defendants or by order of the Court. The Settlement Administrator shall not use the  
25 Class Data or any information contained therein for any purpose other than to administer the  
26 Settlement in accordance with this Agreement. The Settlement Administrator shall be responsible  
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1 for following all privacy laws and taking appropriate steps to ensure that Class Members' personal  
2 information is safeguarded and protected from improper disclosure or use.

3 65. Within twenty-one (21) days of receiving the Class Data from Defendants pursuant to  
4 paragraph 64 above, the Settlement Administrator shall mail by First-Class United States mail, and  
5 email to the extent email addresses are available, the Notice of Class Action and PAGA Settlement  
6 to each Class Member, all in English and Spanish, using the most recent address available to the  
7 Settlement Administrator for mail and email delivery. The Notice of Class Action and PAGA  
8 Settlement will be in the form attached hereto as Exhibit 1 to the Class Members, with any  
9 modifications to non-material terms required by the Court and/or any modifications agreed to by the  
10 Parties and approved by the Court.

11 66. Confirmation of Contact Information. Prior to mailing the Notice of Class Action and  
12 PAGA Settlement, the Settlement Administrator will perform a search based on the National Change  
13 of Address Database for information to update and correct for any known or identifiable address  
14 changes. Any Notices of Class Action and PAGA Settlement returned to the Settlement  
15 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via  
16 regular First-Class U.S. Mail to the forwarding address affixed thereto, and the Settlement  
17 Administrator will indicate the date of such re-mailing on the Notice of Class Action and PAGA  
18 Settlement. If no forwarding address is provided, the Settlement Administrator will promptly  
19 attempt to determine the correct address using reasonable address search tools / skip tracing, and will  
20 then perform a single re-mailing. With regard to any Class Member whose Notice of Class Action  
21 and PAGA Settlement is returned as non-deliverable, and for whom the Settlement Administrator is  
22 unable to determine a reliable address using reasonable and customary methods, the Settlement  
23 Administrator will place their Individual Settlement Payment and PAGA Payment Share in the  
24 Reserve Fund. Their Individual Settlement Payment and PAGA Payment Share will be maintained  
25 by the Settlement Administrator in the Reserve Fund on behalf of the Class Member for sixty (60)  
26 days following expiration of the Check Cashing Deadline. In such event, the Class Member shall  
27 nevertheless remain bound by the terms of the Settlement and the Final Order and Judgment.

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1           67. Pursuant to the Class Action Fairness Act, the Settlement Administrator will also  
2 provide notice of this Settlement to the Office of the Attorneys General of the United States and of  
3 all states where Class Members currently reside.

4                           **Distribution Formula and Opportunity to Contest Workweeks**

5           68. The Notice of Class Action and PAGA Settlement shall be individually tailored for  
6 each Class Member to set forth the number of Qualifying Motor Carrier Workweeks applicable to  
7 the Motor Carrier Class Member or Qualifying Non-Carrier Workweeks applicable to the Non-  
8 Carrier Class Member. If the Class Member is also in the PAGA Group, the Notice shall also set  
9 forth the number of PAGA Workweeks for Motor Carrier Group Members or PAGA Workweeks for  
10 Non-Carrier Group Members. The Notice shall also provide the estimated Workweek Payment Rate  
11 for Class Members and formula for calculating Individual Settlement Payments such that the Motor  
12 Carrier Class Member or Non-Carrier Class Member may readily calculate an estimated Individual  
13 Settlement Payment that he or she will receive under this Settlement if the Court grants final  
14 approval of the Settlement. If the Class Member is also in the PAGA Group, the Notice shall also  
15 provide the estimated Workweek Payment Rate for the PAGA Group and formula for calculating the  
16 PAGA Payment Shares such that the PAGA Group may readily calculate an estimated PAGA  
17 Payment Share that he or she will receive under this Settlement if the Court grants final approval of  
18 the Settlement. The Notice also shall notify the Class Members that governmentally-mandated tax  
19 withholdings shall be deducted from a portion of his or her Individual Settlement Payment, as  
20 described in paragraph 86 below.

21           69. If the Motor Carrier Class Member or Non-Carrier Class Member wishes to contest  
22 the number of Qualifying Motor Carrier Workweeks or Qualifying Non-Carrier Workweeks  
23 assigned to him or her by the Settlement Administrator, or PAGA Motor Carrier Group Member or  
24 PAGA Non-Carrier Group Member wishes to contest the number of PAGA Workweeks for Motor  
25 Carrier Group Members or PAGA Workweeks for Non-Carrier Group Members assigned to him or  
26 her by the Settlement Administrator, the Class Member must submit Proof of Work to inform the  
27 Settlement Administrator of the basis for contesting any of the assigned workweeks. In the case of  
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1 the Class Member's death or incapacity, this may be submitted by the Class Member's authorized  
2 representative. To be accepted, the Class Member's Proof of Work contesting the data must: (1) be  
3 sufficient to allow identification of the Class Member's full name, address, and the last four digits of  
4 his or her Social Security Number (for identification purposes only); (2) state, in writing, the reasons  
5 why he or she believes an additional amount is owed; (3) be signed by the Class Member or his or  
6 her legal representative; and (4) be postmarked on or before the Response Deadline. As used herein,  
7 Proof of Work also includes document(s) such as settlement statements, payment history reports,  
8 invoices, 1099s, tax returns, or other records that a Class Member may have that show his or her  
9 total workweeks with Defendants. As this is not a claims-made Settlement, Class Members need not  
10 submit anything, Class Members shall still be bound by this Agreement and shall release all  
11 Released Class Claims and Released PAGA Claims unless they submit a completed, signed and  
12 timely Opt Out.

### 13 **Opt Out**

14 70. Any Class Member seeking to be excluded from the Class and this Settlement shall  
15 submit a written Opt Out to the Settlement Administrator. The written Opt Out must: (1) contain the  
16 name, address, and the last four digits of the Social Security Number of the person requesting  
17 exclusion; (2) state the Class Member's request to exclude himself or herself from the Settlement  
18 and to opt out of the Settlement; (3) be signed by the Class Member or his or her lawful  
19 representative; and (4) be postmarked by the Response Deadline and returned to the Settlement  
20 Administrator at the specified address. Any Class Member, who submits a completed, signed and  
21 timely written Opt Out shall no longer be a member of the Class, shall be barred from participating  
22 in this Settlement at Final Approval, by appeal, or otherwise, shall be barred from objecting to this  
23 Settlement, and shall receive no benefit from this Settlement, except that Class Members who are in  
24 the PAGA Group will still receive his or her PAGA Payment Share and will release the Released  
25 PAGA Claims. Any untimely or incomplete Opt Out shall be considered null and void. If a Class  
26 Member submits both a completed, signed and timely Proof of Work or Proof of Costs and a  
27 completed, signed and timely Opt Out, the Opt Out shall be deemed invalid, and the Class Member  
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1 shall be a Settlement Class Member and participate in this Settlement. The Settlement Administrator  
2 shall notify Class Counsel and Defense Counsel of the number of timely opt-outs within seven (7)  
3 days after the Response Deadline.

4 71. If more than five percent (5%) of the Class Members opt out of the Settlement by  
5 submitting completed, signed and timely written Opt Out, Defendants shall have the right in their  
6 sole discretion to rescind and void this Settlement by giving written notice to Class Counsel within  
7 ten (10) business days after the Settlement Administrator informs the Parties that the opt out rate  
8 exceeded five percent (5%). If Defendants exercise their right to rescind and void this Settlement  
9 under this paragraph, Defendants shall pay any and all reasonable costs and expenses incurred by the  
10 Settlement Administrator.

#### 11 **Declaration of Compliance**

12 72. As soon as practicable, but no later than ten (10) days following the close of the  
13 Response Deadline, the Settlement Administrator shall provide Class Counsel and Defense Counsel  
14 with a declaration attesting to completion of the notice process set forth in this Agreement, the  
15 number and names of opt outs, and a summary of any disputes raised by any Class Members. This  
16 declaration shall be filed with the Court by Class Counsel along with a motion requesting final  
17 approval of the Settlement.

#### 18 **Sufficient Notice**

19 73. The Parties agree that compliance with the procedures described in this Agreement  
20 constitutes due and sufficient notice to Class Members of this Settlement and the Final Fairness and  
21 Approval Hearing, and satisfies the requirements of due process, and that nothing else shall be  
22 required of Plaintiff, Class Counsel, Defendants, Defense Counsel, or the Settlement Administrator  
23 to provide notice to Class Members of the Settlement and the Final Fairness and Approval Hearing.

#### 24 **Objections to Settlement**

25 74. Any Class Member wishing to object to this Settlement shall inform the Court, Class  
26 Counsel, and Defense Counsel in writing of his or her intent to object by following the procedure set  
27 forth in the Notice of Class Settlement no later than the Response Deadline. Any Objection must:  
28

1 (1) state the Class Member’s full name, address, and the last four digits of his or her Social Security  
2 Number (for identification purposes only); (2) state the grounds for the objection; (3) be signed by  
3 the Class Member or his or her lawful representative; and (4) be postmarked on or before the  
4 Response Deadline and returned to the Settlement Administrator.

5 75. Any Class Member who fails to file a timely written Objection shall be foreclosed  
6 from objecting to this Settlement, and/or appealing any order approving the Settlement and/or  
7 judgment, unless otherwise ordered by the Court.

8 76. Class Counsel and Defense Counsel shall file any responses to any written Objections  
9 submitted to the Court in accordance with this Agreement at least seven (7) days before the Final  
10 Fairness and Approval Hearing, or on another date set by the Court.

### 11 **Final Fairness and Approval Hearing**

12 77. On the date set forth by the Court for the Final Fairness and Approval Hearing in the  
13 order granting preliminary approval of the Settlement, a Final Fairness and Approval Hearing shall  
14 be held before the Court in order to consider and determine: (i) whether the Court should give this  
15 Settlement final approval; (ii) whether the Court should approve Class Counsel’s application for  
16 attorneys’ fees, costs and expenses and any Service Award to Plaintiff; and (iii) to hear any timely  
17 objections to the Settlement. At the Final Fairness and Approval Hearing, Plaintiff, Class Counsel,  
18 Defendants, and Defense Counsel shall ask the Court to give final approval to this Settlement. If the  
19 Court grants final approval of the Settlement, the Settlement Administrator shall post notice of final  
20 judgment on its website within seven (7) calendar days of entry of the Final Order and Judgment.  
21 Class Counsel shall submit a copy of the Final Order and Judgment to the LWDA within ten (10)  
22 days after entry of the Final Order and Judgment in accordance with California Labor Code section  
23 2699(1)(3).

### 24 **Settlement Payment Procedures**

25 Payments under this Agreement shall be made by the Settlement Administrator as follows:

26 78. Settlement Class Members shall be paid exclusively from the Net Settlement Amount.  
27  
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1 (a) First, One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) which  
2 equates to two-and-one half percent (2.5%) of the Gross Settlement Amount will be set aside in a  
3 Reserve Fund as set forth in paragraph 88

4 (b) Second, Thirty-Seven Thousand Five Hundred Dollars (\$37,500) shall be  
5 divided among the PAGA Group Members proportionally. PAGA Payment Shares to the PAGA  
6 Group Members shall be determined based on the number of PAGA Workweeks for Motor Carrier  
7 Group Members and PAGA Workweeks for Non-Carrier Group Members during the PAGA Period.  
8 The \$37,500 PAGA Payment shall be divided by the total number of PAGA Workweeks for Motor  
9 Carrier Group Members times 4 and PAGA Workweeks for Non-Carrier Group Members times 1 for  
10 the PAGA Group Members during the PAGA Period. The result of this division shall yield a  
11 Workweek Payment Rate for the PAGA Group.

12 (i) The gross amount of each PAGA Motor Carrier Group Member's  
13 PAGA Payment Share shall be calculated by multiplying the number of PAGA Workweeks for  
14 Motor Carrier Group Members applicable to that individual times 4 times the Workweek Payment  
15 Rate for the PAGA Group.

16 (ii) The gross amount of each PAGA Non-Carrier Group Member's  
17 PAGA Payment Share shall be calculated by multiplying the number of PAGA Workweeks for Non-  
18 Carrier Group Members applicable to that individual times 1 times the Workweek Payment Rate for  
19 the PAGA Group.

20 (c) Third, One Hundred Thousand Dollars (\$100,000) of the Net Settlement  
21 Amount shall be placed into a Claims Compensation Fund to be used to compensate Class Members  
22 who have had to personally pay costs, charges, fees, or expenses (collectively "costs") on claims  
23 made against them arising out of providing transportation and delivery services for Defendants in  
24 California during the Class Period. Payments from the Claims Compensation Fund shall be part of  
25 the Individual Settlement Payment to Class Members who qualify. For a Class Member to share in  
26 this Claims Compensation Fund, he or she must provide Proof of Costs to the Settlement  
27 Administrator evidencing that: (a) he or she was responsible for and paid costs on a claim(s) made  
28

1 against him or her arising out of providing transportation and delivery services to Defendants in  
2 California during the Class Period; (b) he or she paid the costs on a claim(s); and (c) the amount  
3 paid. This proof must be submitted in writing to the Settlement Administrator before expiration of  
4 the Response Deadline. Funds from the Claims Compensation Fund will be distributed as follows:

5 (i) If the total amount of costs on claim(s) submitted to the Claims  
6 Compensation Fund is equal to or less than One Hundred Thousand Dollars (\$100,000), then each  
7 Class Member who submitted a claim to the Claims Compensation Fund will receive the actual  
8 amount of the costs on claim(s) as reflected in his or her Proof of Work submitted to the Settlement  
9 Administrator. In addition, if the total amount of costs on claim(s) submitted to the Claims  
10 Compensation Fund is less than One Hundred Thousand Dollars (\$100,000), then the amount  
11 remaining in the Claims Compensation Fund shall be added to the Net Settlement and distributed as  
12 set forth in paragraph 81(d) below.

13 (ii) If the total amount of costs on claim(s) submitted to the Claims  
14 Compensation Fund is greater than One Hundred Thousand Dollars (\$100,000), then each Class  
15 Member who submitted a claim to the Claims Compensation Fund will receive a pro-rata amount of  
16 the Claims Compensation Fund. The pro-rata amount shall be calculated by dividing the Class  
17 Member's total costs of claims evidenced in his or her Proof of Work by the total amounts of costs  
18 of claims submitted by all Class Members which will yield a percentage value. The Class Member  
19 shall receive that percentage value of the total Claims Compensation Fund.

20 (d) Finally, the Net Settlement Amount shall be divided among all Settlement  
21 Class Members proportionally. Individual Settlement Payments to each Settlement Class Member  
22 shall be determined based on the number of his or her Qualifying Motor Carrier Workweeks or  
23 Qualifying Non-Carrier Workweeks during the Class Period. The Net Settlement Amount shall be  
24 divided by the total number of Qualifying Non-Carrier Workweeks times 4 and Qualifying Motor  
25  
26  
27  
28



1 Carrier Workweeks times 1 for all Settlement Class Members during the Class Period.<sup>1</sup> The result  
2 of this division shall yield a Workweek Payment Rate for Class Members.

3 (i) The gross amount of each Motor Carrier Class Member's Individual  
4 Settlement Payment shall be calculated by multiplying the number of Qualifying Motor Carrier  
5 Workweeks applicable to that Settlement Class Member times 4 times the Workweek Payment Rate  
6 for Class Members. Governmentally-required employee tax withholdings shall be deducted from  
7 that portion of each Individual Settlement Payment allocated as wages.

8 (ii) The gross amount of each Non-Carrier Class Member's Individual  
9 Settlement Payment shall be calculated by multiplying the number of Qualifying Non-Carrier  
10 Workweeks applicable to that Settlement Class Member times 1 times the Workweek Payment Rate  
11 for Class Members. Governmentally-required employee tax withholdings shall be deducted from  
12 that portion of each Individual Settlement Payment allocated as wages.

13 82. Within ten (10) business days after the Effective Date, Defendants shall transmit the  
14 Gross Settlement Amount to the Settlement Administrator. Within fifteen (15) business days after  
15 the Effective Date, the Settlement Administrator shall transmit to Class Counsel the attorneys' fees,  
16 costs and expenses approved by the Court, shall transmit to the Class Representative his Service  
17 Award approved by the Court, shall transmit to the LWDA the payment pursuant to PAGA, shall  
18 mail an Individual Settlement Payment to each Settlement Class Member, and PAGA Payment Share  
19 to each PAGA Group Member.

20 83. Individual Settlement Payments and PAGA Payment Shares shall be made by check  
21 and shall be made payable to each Settlement Class Member and the PAGA Group as set forth in  
22 this Agreement. Under no circumstances shall the Settlement Administrator distribute checks to  
23 Settlement Class Members and/or the PAGA Group until all timely objections, opt-outs, and  
24 workweek disputes have been considered, calculated, and accounted for, and the Class Counsel fees  
25

26 \_\_\_\_\_  
27 <sup>1</sup> This differential is based on the liability and damages analyses performed by Class Counsel, which formed the basis of  
28 Class Counsel's mediated negotiations.

1 and expenses, costs of the Settlement Administrator, and a Service Award have been calculated and  
2 accounted for.

3 84. The Individual Settlement Payments are payments for all Released Class Claims for  
4 the Settlement Class Members. The PAGA Payment Shares are payments for the Released PAGA  
5 Claims for the PAGA Group. The Individual Settlement Payments for Settlement Class Members  
6 shall be allocated as follows: (a) Twenty Percent (20%) of the amount of each Individual Settlement  
7 Payment shall be allocated to their respective unpaid wage claims and shall be paid net of all  
8 applicable employment taxes, including any federal, state, and/or local in issue tax withholding  
9 requirements and the employee share of FICA taxes; (b) Forty Percent (40%) of the amount of each  
10 Individual Settlement Payment shall be allocated to expense reimbursement and shall not be subject  
11 to withholding; and (c) Forty Percent (40%) of the amount of each Individual Settlement Payment  
12 shall be allocated to alleged penalties and interest and shall not be subject to withholding. PAGA  
13 Payment Shares will be allocated entirely as penalties and will be included on an IRS Form 1099 to  
14 the PAGA Group.

15 (a) Each Settlement Class Member, the PAGA Group, Class Counsel, and Class  
16 Representative shall be responsible for remitting to state and/or federal taxing authorities any  
17 applicable taxes which may be owed on the portion of any payment received pursuant to this  
18 Agreement, except as provided by this Agreement.

19 (b) The Settlement Administrator shall be authorized to establish a Qualified  
20 Settlement Fund (“QSF”) pursuant to Internal Revenue Service (“IRS”) rules and regulations in  
21 which the Gross Settlement Amount shall be placed and from which payments required by the  
22 Settlement shall be made. The Settlement Administrator shall apply for its own Employer  
23 Identification Number (“EIN”) for the QSF and shall use its own EIN for reporting payroll  
24 withholdings to the appropriate state and federal tax authorities with respect to each Individual  
25 Settlement Payment and shall transmit the required employers’ and employees’ share of the required  
26 withholdings applicable to the amount allocated to alleged unpaid wages, to the appropriate state and  
27  
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1 federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the  
2 requirements of a QSF under US Treasury Regulation section 468B-1.

3 85. It is expressly understood and agreed that the receipt of an Individual  
4 Settlement Payment and/or PAGA Payment Share shall not entitle any Class Member and/or the  
5 PAGA Group to compensation or benefits under any company bonus, contest or other compensation  
6 or benefit plan or agreement in place during the applicable Class Period nor applicable PAGA  
7 Period, nor shall it entitle any Class Member and/or the PAGA Group to any increased retirement,  
8 401(k) or matching benefits, or deferred compensation benefits. The Parties agree that any  
9 Individual Settlement Payment made to Settlement Class Members and any PAGA Payment Share  
10 made to the PAGA Group under the terms of this Agreement shall not represent any modification of  
11 previously credited length of service or other eligibility criteria under any bonus plan, employee  
12 pension benefit plan or employee welfare plan sponsored by any of the Released Parties, or to which  
13 any of the Released Parties are required to make contributions. Further, any Individual Settlement  
14 Payment and PAGA Payment Share paid under this Agreement shall not be considered evidence of  
15 compensation in any year for purposes of determining eligibility for, or benefit accrual within, any  
16 employee pension benefit plan or employee welfare benefit plan sponsored by any of the Released  
17 Parties or to which any of the Released Parties are required to make contributions. It is the Parties'  
18 intent that the Individual Settlement Payment and PAGA Payment Share provided for in the  
19 Agreement are the sole payments to be made by Defendants to the Settlement Class Members and  
20 the PAGA Group, and that the Settlement Class Members and the PAGA Group are not entitled to  
21 any new or additional compensation or benefits as a result of having received the Individual  
22 Settlement Payment and PAGA Payment Share, notwithstanding any contrary terms in any  
23 agreement, contract, benefit or compensation plan document that might have been in effect during  
24 the applicable Class Period and PAGA Period.

25 86. Initial Distribution of Individual Settlement Payments and Unclaimed Funds.  
26 Settlement Class Members will be mailed checks for their Individual Settlement Payments and  
27 PAGA Payment Shares within 30 days of the Effective Date, except that checks will not be sent to  
28

1 Settlement Class Members whose Notice of Class Action and PAGA Settlement is returned as non-  
2 deliverable and for whom the Settlement Administrator is unable to determine a reliable address  
3 using reasonable and customary methods. Rather, the Individual Settlement Payments and PAGA  
4 Payment Shares corresponding to Settlement Class Members who cannot be located, if any, will be  
5 placed in the Reserve Fund. Notwithstanding, such Settlement Class Member shall remain bound by  
6 the Settlement's Released Class Claims and Released PAGA Claims.

7 87. Check Cashing Deadline. Individual Settlement Payment checks and PAGA Payment  
8 Share checks shall remain negotiable for 150 days from the date of mailing the Initial Distribution.  
9 This limitation will be printed on the face of each check. The value of any checks that remain  
10 uncashed after this 150-day deadline will be placed in the Reserve Fund.

11 88. Reserve Fund. All individuals who were not originally included in the Class Data but  
12 request participation and are confirmed to be Class Members after the Initial Distribution of  
13 Individual Settlement Payments may request payments from the Reserve Fund. The Reserve Fund  
14 shall remain open for 60 days following the Check Cashing Deadline.

15 (a) The Settlement Administrator will determine the validity of any such requests  
16 for payments from the Reserve Fund and the amount, if any, to pay after consultation with the  
17 Parties. The Settlement Administrator will consider any relevant information submitted by the Class  
18 Member, Defendants, or Class Counsel. Defendants' records will be presumed correct, but the  
19 Settlement Administrator will evaluate the evidence submitted and will make the final decision as to  
20 the merits of the claim and will provide the individuals determined to be Class Members with a  
21 Notice. The Settlement Administrator will calculate the amount of any payments to Class Members  
22 from the Reserve Fund based on the distribution formula set forth in paragraph 81, as if the  
23 Settlement Class Member was included during the Initial Distribution of Individual Settlement  
24 Payments and promptly mail the Settlement Class Member an Individual Settlement Payment check,  
25 including any PAGA Payment Share, that shall remain negotiable for sixty (60) days after the Check  
26 Cashing Deadline.

1 (b) If the Reserve Fund is exhausted, Defendants have no obligation to make a  
2 payment to the Class Members who submit claims but were not originally included in the Class  
3 Data. The Reserve Fund shall remain open for sixty (60) days after the Check Cashing Deadline.  
4 Thereafter, no further requests for payment from the Reserve Fund shall be accepted for any reason  
5 and the Reserve Fund will be closed. The Settlement Administrator will distribute any remaining  
6 money in the Reserve Fund to a *cy pres* beneficiary approved by the Court. The Parties will propose  
7 St. Christopher Fund (<https://truckersfund.org>) as the *cy pres* recipient. If the Court does not  
8 approve St. Christopher Fund, then the Parties will meet and confer in good faith to agree upon an  
9 alternate *cy pres* recipient(s).

10 (c) Notwithstanding the above, valid claims made before the mailing deadline for  
11 Individual Settlement Payments shall be funded exclusively out of the Net Settlement Amount in  
12 accordance with paragraph 81, the previously unidentified Class Member's information shall be  
13 included in the Class Data, and he or she shall be promptly sent a Notice.

14 89. A Settlement Class Member and/or member of the PAGA Group who does not cash  
15 his or her check within the 150-day time frame set forth above or, for Class Members receiving  
16 payment from the Reserve Fund, sixty (60) days after the Check Cashing Deadline, shall  
17 nevertheless remain bound by the Settlement's Released Class Claims and Released PAGA Claims.  
18 Notwithstanding the foregoing, the Settlement's Released Class Claims does not include any  
19 individual claim under Section 16(b) of the FLSA, 29 U.S.C. 216(b), as to a Settlement Class  
20 Member who does not opt-in to the Settlement by cashing, depositing or endorsing his or her  
21 Individual Settlement Payment check, to the extent that opting-in is required to release such FLSA  
22 claims.

23 **The Settlement Administrator**

24 90. The Settlement Administrator shall administer the Settlement, including, but not  
25 limited to: (i) translating the Notice of Class Action and PAGA Settlement into Spanish; (ii) printing,  
26 mailing and emailing (to the extent email addresses are available), in both English and Spanish, the  
27 Notice of Class Action and PAGA Settlement; (iii) performing NCOA searches, skip tracing, and re-

1 mailing (as necessary) of the Notice of Class Action and PAGA Settlement pursuant to paragraphs  
2 67-68 above; (iv) receiving Opt Outs and Objections from Class Members; (v) preparing and  
3 submitting to Settlement Class Members and government entities all appropriate tax filings and  
4 forms; (vi) computing the amount of and distributing Individual Settlement Payments, PAGA  
5 Payment Share, Service Award, and Class Counsel attorneys' fees and costs; (vii) processing and  
6 validating Opt Outs and Objections; (viii) processing and resolving, after consultation with the  
7 Parties, any timely Proof of Work for disputes submitted by Class Members as to their workweeks or  
8 costs of claims (ix) processing and resolving, after consultation with the Parties, any timely requests  
9 for payment from the Reserve Fund; (x) establishing a QSF, as defined by the Internal Revenue  
10 Code; and (xi) calculating and remitting to the appropriate government agencies all employer and  
11 employee payroll tax obligations arising from the Settlement and preparing and submitting filings  
12 required by law in connection with the payments required by the Settlement.

13         91. Settlement administration fees in a reasonable amount shall be paid to the Settlement  
14 Administrator from the Gross Settlement Amount. Settlement administration fees are estimated to  
15 be approximately Thirty-Nine Thousand Eight Hundred and Thirty-One Dollars and No Cents  
16 (\$39,831.00). If the actual cost of settlement administration is less or more than the amount  
17 approved by the Court, those funds shall be added to or subtracted from the Net Settlement Amount  
18 for allocation to Settlement Class Members. All costs associated with settlement administration  
19 shall come out of the Gross Settlement Amount.

20 **Resolution of Disputes Over Qualifying Workweeks, PAGA Workweeks, Individual Settlement**  
21 **Payments, and/or PAGA Payment Share**

22         92. In calculating the Individual Settlement Payment for each Class Member and PAGA  
23 Payment Share for each member of the PAGA Group, Defendants' records regarding Qualifying  
24 Motor Carrier Workweeks of Motor Carrier Class Members, Qualifying Non-Carrier Workweeks of  
25 Non-Carrier Class Members, PAGA Workweeks for PAGA Motor Carrier Group Members and  
26 PAGA Workweeks Non-Carrier Group Members shall be presumed to be correct. Any Class  
27 Member and/or member of the PAGA Group who disagrees with Defendants' determination of his  
28

1 or her or its Qualifying Motor Carrier Workweeks or Qualifying Non-Carrier Workweeks and/or  
2 PAGA Workweeks for Motor Carrier Group Members or PAGA Workweeks for Non-Carrier Group  
3 Members as indicated on his or her or its Notice of Class Action and PAGA Settlement may dispute  
4 that calculation to the Settlement Administrator as set forth in paragraphs 36 and 71 above.  
5 Defendants' determination shall be presumed accurate. The Settlement Administrator shall  
6 investigate the dispute, requesting information from Defendants as necessary and make the final  
7 determination of whether any additional amount is owed. All such challenges must be postmarked  
8 within the Response Deadline. In no case shall a dispute result in a payment by Defendants in  
9 excess of the Gross Settlement Amount.

10 **Service Award**

11 93. From the Gross Settlement Amount, the Class Representative may seek approval  
12 from the Court of a Service Award not to exceed Fifteen Thousand Dollars and No Cents  
13 (\$15,000.00) for serving as a Class Representative, which Defendants shall not oppose.

14 **Payment of Class Counsel Attorneys' Fees, Costs and Expenses**

15 94. Class Counsel shall apply to the Court at the Final Fairness and Approval Hearing for  
16 an award of attorneys' fees not to exceed the amount of One Million Two Hundred Fifty Thousand  
17 Dollars and No Cents (\$1,250,000.00), which is Twenty-Five Percent (25%) of the Gross Settlement  
18 Amount, plus an award of costs not to exceed the amount Twenty Thousand Dollars (\$20,000), both  
19 of which shall be paid out of the Gross Settlement Amount. Class Counsel and Defendants agree  
20 that such awards of attorneys' fees and costs are reasonable under the circumstances. Nothing in this  
21 Agreement shall restrict Plaintiff's or Class Counsel's ability to appeal any decision by the Court to  
22 award less than the requested attorneys' fees and costs or Class Representative Service Award. Any  
23 order relating to the award of attorney's fees, costs or Class Representative Service Award, or any  
24 appeal from any order relating thereto or reversal or modification thereof, will not operate to  
25 terminate or cancel this Agreement. If the amount of, Service Award, attorneys' fees and/or costs  
26 awarded by the Court is less than the requested amounts, the difference shall serve to increase the  
27 Net Settlement Amount to be distributed to Settlement Class Members as part of their Individual  
28

1 Settlement Payments. Nothing in this Agreement will require Defendants to pay more than the  
2 Gross Settlement Amount under any circumstances.

### 3 **Taxes and Withholding and Indemnification**

4 95. The Settlement Administrator shall be responsible for ensuring that all tax obligations  
5 associated with the Settlement are timely paid to the appropriate governmental taxing authorities.

6 The Settlement Administrator's responsibilities include the following:

- 7 (i) filing all federal, state and local employment tax returns, income tax returns,  
8 and any other tax returns associated with the taxes,
- 9 (ii) timely and proper filing of all required federal, state and local information  
10 returns (*e.g.*, 1099s, W-2s, etc.),
- 11 (iii) completion of any other steps necessary for compliance with any tax  
12 obligations applicable to Settlement Payments under federal, state and/or local  
13 law, and
- 14 (iv) authorized to establish a QSF pursuant to IRS rules and regulations in which  
15 the Gross Settlement Amount shall be placed and from which payments  
16 required by the Settlement shall be made. establishing

17 96. The Settlement Administrator shall determine the amount of any tax withholding to  
18 be deducted from each Settlement Class Member's Individual Settlement Payment. All such tax  
19 withholdings shall be remitted by the Settlement Administrator to the proper governmental taxing  
20 authorities.

21 97. Each party to this Agreement acknowledges and agrees that:

- 22 (i) No provision of this Agreement and no written communication or disclosure  
23 between or among the Parties or their attorneys and other advisers is or was  
24 intended to be, nor shall any such communication or disclosure constitute or  
25 be construed or be relied upon as, tax advice within the meaning of United  
26 State Treasury Department Circular 230 (31 CFR Part 10, as amended);





1 or could have been alleged against any of the Released Parties arising out of, in connection with, or  
2 based on the facts alleged in the Complaint and/or the PAGA Letter. This includes, but may not be  
3 limited to, misclassification, failure to pay wages including, but not limited to, overtime wages and  
4 minimum wages, failure to provide meal and rest periods, unpaid compensation or premium pay  
5 arising out of missed, late, on-duty and/or short meal and/or rest periods, failure to pay wages semi-  
6 monthly at designated times, failure to reimburse for business expenses, failure to pay wages upon  
7 termination and failure to provide accurate itemized wage statements, conversion, penalties,  
8 damages, interest, costs or attorneys' fees, and related violations of any other state or federal law,  
9 whether for economic damages, non-economic damages, liquidated or punitive damages, restitution,  
10 tort, contract, equitable relief, injunctive or declaratory relief, to the extent necessary to effect a full  
11 and complete release of the Released Class Claims, that are related or derivative of the claims related  
12 in this paragraph including, but not limited to, all wage and hour claims under any common laws, the  
13 Fair Labor Standards Act ("FLSA"), Cal. Code of Regulations, Title 8, Sections 11000, *et seq.*,  
14 Wage Order 9 or any other applicable Wage Order, California Labor Code Sections 96-98.2, *et seq.*,  
15 200-204, 208, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 229, 400-410, 510,  
16 511, 512, 515, 551, 552, 558, 1174, 1174.5, 1175, 1194-1197.1, 1198, 1199, 2800, 2802, 2804, 3294  
17 and 3336 and any related provisions, the California Code of Civ. Proc. Section 1021.5, and/or the  
18 California Business & Professions Code Sections 17200, *et seq.*, provided they were or could have  
19 been alleged against any of the Released Parties arising out of, in connection with, or based on the  
20 facts alleged in the Complaint and/or the PAGA Letter. This release shall extend to all such claims  
21 accrued during the Class Period. Notwithstanding the foregoing, Released Class Claims do not  
22 include any individual claim under Section 216(b) of the FLSA, 29 U.S.C. § 216(b), as to a  
23 Settlement Class Member who does not opt-in to the Settlement by cashing, depositing, or endorsing  
24 his or her Individual Settlement Payment check, to the extent that opting-in is required to release  
25 such FLSA claims.

26 100. Released PAGA Claims with Respect to the PAGA Group. Providing there is final  
27 approval of this Settlement, then as of the date that Defendants transmit the Gross Settlement  
28

1 Amount to the Settlement Administrator, Plaintiff on behalf of himself, the State of California, and  
2 each PAGA Group Member, shall fully and finally release and discharge the Released Parties, and  
3 each of them from the Released PAGA Claims, which shall extend to claims for civil penalties  
4 applicable to Plaintiff and each PAGA Group Member individually and on behalf of their respective  
5 successors, assigns, agents, attorneys, executors, heirs and personal representatives and/or their  
6 affiliated business entities (if any). The Released PAGA Claims means all wage and hour claims,  
7 rights, demands, liabilities, causes of action, and theories of liability of every nature and description  
8 under the California Labor Code Private Attorneys General Act of 2004, Labor Code Sections 2698,  
9 *et seq.*, that were or could have been alleged against any of the Released Parties arising out of, in  
10 connection with, or based on the facts alleged in the Complaint, and/or the PAGA Letter, including  
11 but not limited to, all claims for penalties for violation of any state law, for misclassification, failure  
12 to pay wages including, but not limited to, overtime wages and minimum wages, failure to provide  
13 meal and rest periods, unpaid compensation or premium pay arising out of missed, late, on-duty  
14 and/or short meal and/or rest periods, failure to pay wages semi-monthly at designated times, failure  
15 to reimburse for business expenses, failure to pay wages upon termination and failure to provide  
16 accurate itemized wage statements, conversion, penalties, costs or attorneys' fees, to the extent  
17 necessary to effect a full and complete release of such Released PAGA Claims, including all claims  
18 for penalties based on the Cal. Code of Regulations, Title 8, Sections 11000, *et seq.*, Wage Order 9  
19 or any other applicable Wage Order, California Labor Code Sections 96-98.2, *et seq.*, 200-204, 208,  
20 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 229, 400-410, 510, 511, 512, 515,  
21 551, 552, 558, 1174, 1174.5, 1175, 1194-1197.1, 1198, 1199, 2800, 2802, 2804, 3294 and 3336 and  
22 any related provisions. This release shall extend to all such claims accrued during the PAGA Period.  
23 This release shall be binding on the PAGA Group regardless of whether they submit a valid Opt Out  
24 from the Class.

25       101. Release by Plaintiff. Providing there is final approval of this Settlement, then as of  
26 the date that Defendants transmit the Gross Settlement Amount to the Settlement Administrator,  
27 Plaintiff, for himself, his successors, assigns, agents, executors, heirs and personal representatives,  
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1 spouse and attorneys, and any and all of them, voluntarily and with the advice of counsel, waives  
2 and releases any and all claims, obligations, demands, actions, rights, causes of action, and liabilities  
3 against any of the Released Parties of whatever kind and nature, character, and description, whether  
4 in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance,  
5 regulation, constitution, common law, or other source of law or contract, whether known or  
6 unknown, and whether anticipated or unanticipated, including all claims arising from or relating to  
7 any and all acts, events and omissions occurring prior to the date of final approval of this Agreement  
8 including, but not limited to, all claims which relate in any way to his alleged engagement or with  
9 the termination of his alleged engagement with the Released Parties and/or his provision of services  
10 to the Released Parties during the Class Period. Plaintiff further releases all unknown claims against  
11 any of the Released Parties, covered by California Civil Code Section 1542, which states: “A  
12 **general release does not extend to claims that the creditor or releasing party does not know or**  
13 **suspect to exist in his or her favor at the time of executing the release and that, if known by**  
14 **him or her, would have materially affected his or her settlement with the debtor or released**  
15 **party.”** Notwithstanding the provisions of section 1542, and for the purpose of implementing a full  
16 and complete release and discharge of all of his Released Claims, Plaintiff expressly acknowledges  
17 that this Settlement is intended to include in its effect, without limitation, all Released Claims which  
18 Plaintiff does not know or suspect to exist in his favor at the time of execution hereof, and that the  
19 Settlement contemplates the extinguishment of all such Released Claims.

20 **LIMITATIONS ON USE OF THIS SETTLEMENT**

21 **No Admission**

22 102. Neither the acceptance nor the performance by Defendants of the terms of this  
23 Agreement nor any of the related negotiations or proceedings are or shall be claimed to be, construed  
24 as, or deemed a precedent or an admission by Defendants of the truth of any allegations in the  
25 Complaint or the PAGA Letter.  
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1 **Non-Evidentiary Use**

2 103. Defendants deny that they have failed to comply with the law in any respect, or have  
3 any liability to anyone based on the claims asserted in the Civil Action. Plaintiff expressly  
4 acknowledges that this Agreement is entered into for the purpose of compromising highly disputed  
5 claims and that nothing herein is an admission of liability, wrongdoing, or the propriety of class or  
6 representative treatment by Defendants. Neither the Agreement nor any document prepared in  
7 connection with the Settlement may be admitted in any proceeding as an admission by Defendants.  
8 Notwithstanding this paragraph, any and all provisions of this Agreement may be admitted in  
9 evidence and used in any proceeding to enforce the terms of this Agreement, or in defense of any  
10 claims released or barred by this Agreement.

11 **Nullification**

12 104. If the Court for any reason does not approve this Settlement, this Agreement shall be  
13 considered null and void and the Parties to this Agreement shall stand in the same position, without  
14 prejudice, as if the Agreement had been neither entered into nor filed with the Court.

15 105. Invalidation of any material portion of this Agreement shall invalidate this Agreement  
16 in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full  
17 force and effect.

18 **MISCELLANEOUS PROVISIONS**

19 **No Inducements**

20 106. Plaintiff and Defendants acknowledge that they are entering into this Settlement as a  
21 free and voluntary act without duress or undue pressure or influence of any kind or nature  
22 whatsoever, and that neither Plaintiff nor Defendants have relied on any promises, representations or  
23 warranties regarding the subject matter hereof other than as set forth in this Agreement.

24 **No Prior Assignment**

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

3 **Construction**

4 108. The Parties agree that the terms and conditions of this Agreement are the result of  
5 lengthy, intensive arm's-length negotiations between the Parties and their counsel, and this  
6 Agreement shall not be construed in favor of or against any Party by reason of the extent to which  
7 any Party or his or its counsel participated in the drafting of this Agreement.

8 **California Law**

9 109. All terms of this Agreement and its exhibits shall be governed and interpreted by and  
10 according to the laws of the State of California, without giving effect to any conflict of law  
11 principles or choice of law principles.

12 **Captions and Interpretations**

13 110. Paragraph titles or captions contained herein are inserted as a matter of convenience  
14 and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any  
15 provision hereof.

16 **Incorporation of Exhibits**

17 111. All exhibits to this Agreement are incorporated by reference and are a material part of  
18 this Agreement. Any notice, order, judgment, or other exhibit that requires approval of the Court  
19 must be approved without material alteration from its current form in order for this Agreement to be  
20 enforceable.

21 **Modification**

22 112. This Agreement may not be changed, altered, or modified, except in a writing signed  
23 by the Parties, and approved by the Court. This Agreement may not be discharged except by  
24 performance in accordance with its terms or by a writing signed by the Parties.

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1 **Reasonableness of Settlement**

2 113. Plaintiff represent that this is a fair, reasonable, and adequate settlement and have  
3 arrived at this settlement through arms-length negotiations, taking into account all relevant factors,  
4 present and potential.

5 **Integration Clause**

6 114. This Agreement contains the entire agreement between the Parties relating to the  
7 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,  
8 understandings, representations, and statements, whether oral or written and whether by a party or  
9 such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

10 **Binding On Assigns**

11 115. This Agreement shall be binding upon and inure to the benefit of the Parties and their  
12 respective heirs, trustees, executors, administrators, successors and assigns.

13 **No Prevailing Party**

14 116. Except as otherwise provided for in this Agreement, no Party shall be considered a  
15 prevailing party and each Party shall bear its or his own attorney fees and costs. Subject to Court  
16 approval, Defendants shall not contest Plaintiff's entitlement to attorneys' fees and costs by virtue of  
17 executing this Agreement, nor of the amounts sought pursuant to Paragraphs 2 and 94, above.

18 **Class Counsel Signatories**

19 117. It is agreed that because the members of the Class are numerous, it is impossible or  
20 impractical to have each member of the Class execute this Agreement. The Notice of Class Action  
21 and PAGA Settlement shall advise all Class Members of the binding nature of the Agreement, and  
22 the Agreement shall have the same force and effect as if this Agreement were executed by each  
23 member of the Class.

24 **Counterparts**

25 118. This Agreement, and any amendments hereto, may be executed in any number of  
26 counterparts, each of which when executed and delivered shall be deemed to be an original and all of  
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1 which taken together shall constitute but one and the same instrument. Fax and pdf signatures shall  
2 be as valid as original signatures.

### 3 **Waiver of Right to Object**

4 119. By signing this Agreement, Plaintiff, on behalf of the Class, allegedly aggrieved  
5 employees and himself, agrees to be bound by its terms. Plaintiff further agree not to request to be  
6 excluded from the Class or Settlement and agree not to object to any of the terms of the Agreement.  
7 Any request for exclusion from the Settlement by Plaintiff or any Objection by Plaintiff shall be void  
8 and of no force and effect. Likewise, Defendants agree to be bound by the terms of this Settlement  
9 and agree not to object to any of the terms of the Agreement.

### 10 **Administration Costs if Settlement Fails**

11 120. If the Settlement is not finally approved by the Court, any costs incurred by the  
12 Settlement Administrator shall be paid equally by the Parties (half by Plaintiff and/or Class Counsel  
13 and half by Defendants).

### 14 **Final Order and Judgment**

15 121. Upon final approval of the Settlement, a Final Order and Judgment shall be entered  
16 by the Court which shall, among other things:

- 17 (i) Grant final approval to the Settlement as fair, reasonable, adequate, in good  
18 faith and in the best interests of the Class as a whole, and order the Parties to  
19 carry out the provisions of this Agreement.
- 20 (ii) Adjudge that the Settlement Class Members of the Settlement are conclusively  
21 deemed to have released the Released Parties from the Released Class Claims,  
22 as more specifically set forth above.
- 23 (iii) Adjudge that the PAGA Group is conclusively deemed to have released the  
24 Released Parties from the Released PAGA Claims and are no longer  
25 aggrieved employees for any PAGA Claims that have accrued during the  
26 PAGA Period, as more specifically set forth above.



- 1 (iv) Prohibit and permanently enjoin each Settlement Class Member of the
- 2 Settlement from pursuing in any fashion against any of the Released Parties
- 3 any and all of the Released Class Claims.
- 4 (v) Prohibit and permanently enjoin each member of the PAGA Group of the
- 5 Settlement from pursuing in any fashion against any of the Released Parties
- 6 any and all of the Released PAGA Claims.
- 7 (vi) Reserve continuing jurisdiction as provided herein.

8 **Limitations on Disclosure**

9 122. Plaintiff and Defendants agree that (except for purposes of enforcement) they shall  
10 not respond substantively to any press inquiry and shall not issue any press release or initiate  
11 communications with the press regarding the Settlement. Neither Class Counsel, Defendants’  
12 counsel nor the Parties shall utilize this Settlement for purposes of marketing themselves or in any  
13 political advertising. Notwithstanding the above, Class Counsel may communicate to any court the  
14 terms of the Settlement for purposes of conditional class certification, and for preliminary approval  
15 and final approval of the Settlement.

16 123. This Agreement, the Settlement, and any proceedings or actions or negotiations in  
17 connection therewith shall be deemed settlement communications covered by California Evidence  
18 Code Sections 1152 and 1154, Federal Rule of Evidence 408, and any other similar provisions or  
19 law, and shall not be construed as an admission of truth of any allegation or the validity of any cause  
20 of action or claim asserted or of any liability therein.

21  
22 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized  
23 attorneys, as of the day and year herein set forth.

24  
25 DATED: \_\_\_\_\_ JOSEPH KIMBO

26 DATED: \_\_\_\_\_  
27 RYDER LAST MILE, INC. (f/k/a “MXD GROUP,  
28 INC.”) and RYDER SYSTEM, INC.

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

**APPROVED AS TO FORM AND CONTENT:**

DATED: \_\_\_\_\_

SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYNs

By \_\_\_\_\_  
Joshua Konecky  
Attorneys for Plaintiff JOSEPH KIMBO

DATED: \_\_\_\_\_

REED SMITH LLP

By \_\_\_\_\_  
Mara D. Curtis  
Attorneys for Defendants RYDER LAST MILE, INC.  
(f/k/a "MXD GROUP, INC.") and RYDER SYSTEM,  
INC.