

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THOMAS HUDDLESTON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

JOHN CHRISTNER TRUCKING, LLC,

Defendant.

Case No. 4:17-cv-00549-GKF-FHM

**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

COMES NOW, Plaintiff Thomas Huddleston (“Plaintiff”), by and through his undersigned counsel, moves this Court for an Order:

1. Granting preliminary approval of the Parties’ Joint Stipulation of Settlement and Release of Class and Collective Action (“Settlement”), a true and correct copy of which is attached as Exhibit A to the Declaration of Carolyn H. Cottrell in support of this Motion;
2. For settlement purposes, preliminarily certifying the state law claims as a Fed. R. Civ. P. 23 class on behalf of the Settlement Class;
3. Preliminarily approving Plaintiff Thomas Huddleston as Representative of the Classes and as the Collective Representative of the FLSA Collective for purposes of the Settlement;
4. Preliminarily approving Schneider Wallace Cottrell Konecky LLP and the Law Offices of Robert S. Boulter as Class Counsel for the Classes and the FLSA Collective;

5. Preliminarily approving Settlement Services, Inc. as Settlement Administrator and preliminarily approving the costs of the claims administration;
6. Preliminarily approving Class Counsel's request for attorneys' fees and costs;
7. Approving the Class Notice, a true and correct copy of which is attached to the Settlement as Exhibit 2;
8. Authorizing the Settlement Administrator to mail and email the approved Class Notice; and
9. Approving the proposed schedule and procedure for completing the final approval process as set forth in the Settlement.

Plaintiff brings this Motion pursuant to Federal Rules of Civil Procedure 23(e) and long-established precedent requiring Court approval for Fair Labor Standards Act settlements. This Motion is based on the accompanying Memorandum of Law, the Declaration of Carolyn H. Cottrell in Support of Plaintiff's Unopposed Motion for Preliminary Approval of the Settlement, the attached Exhibits, and all other records, pleadings, and papers on file in this action. Pursuant to the terms of the Settlement Agreement, Defendant does not oppose this Motion.

A proposed Order is submitted for the Court's consideration.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 1

A. Procedural Background..... 1

1. Plaintiff’s Complaint..... 1

2. JCT’s Motion for Judgment on the Pleadings and Plaintiff’s Motion for Conditional Certification..... 2

3. Pre-certification discovery and additional motion practice..... 3

4. Plaintiff’s motion for class certification and JCT’s motion to reconsider the Court’s certification order..... 5

5. JCT’s Rule 23(f) petition, Plaintiff’s cross-petition, and the subsequent appeal..... 6

6. Settlement Conference and the Resulting Settlement..... 7

III. KEY TERMS OF SETTLEMENT 7

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT AS TO THE CLASSES AND APPROVAL OF THE SETTLEMENT AS TO THE COLLECTIVE 11

A. The Court Should Grant Preliminary Approval of the Settlement as to the Classes..... 11

1. The Proposed Settlement is Fair, Reasonable, and Adequate, and Should be Preliminarily Approved..... 12

2. Near Identical Definitions of the Proposed Classes Have Already Been Certified, and Should Continue to Be Certified Here for Settlement Purposes..... 19

B. The Court Should Grant Approval of the Settlement as to the Collective..... 19

C. The Proposed Notice is Reasonable..... 22

D. The Court Should Approve the Proposed Schedule..... 24

V. CONCLUSION..... 25

TABLE OF AUTHORITIES

Cases

Amoco Prod. Co. v. Fed. Power Comm’n,
465 F.2d 1350 (10th Cir. 1972) 11

Armstrong v. Bd. of Sch. Dirs.,
616 F.2d 305 (7th Cir. 1980) 11

Ashley v. Reg’l Transp. Dist.,
2008 U.S. Dist. LEXIS 13069 (D. Colo. 2008) 14, 16

Baker v. Vail Resorts Mgmt. Co.,
Civil Action No. 13-cv-01649-PAB-CBS, 2014 U.S. Dist. LEXIS 22812, 2014 WL 700096
(D. Colo. Feb. 24, 2014) 20

Big O Tires, Inc. v. Bigfoot 4x4, Inc.,
167 F. Supp. 2d 1216 (D. Colo. 2001)..... 11

Brooklyn Savings Bank v. O’Neil,
324 U.S. 697, 707 n.18, 65 S. Ct. 895, 89 L. Ed. 1296 (1945)..... 21

Childs v. Unified Life Ins. Co.,
No. 10-CV-23-PJC, 2011 U.S. Dist. LEXIS 138818 (N.D. Okla. Dec. 2, 2011)..... 17

Eisen v. Carlisle & Jacquelin
417 U.S. 156 (1974)..... 22

Gooch v. Life Investors Ins. Co. of Am.,
672 F.3d 402 (6th Cir. 2012) 22, 23

Gottlieb v. Wiles,
11 F.3d 1004 (10th Cir. 1993) 14

Gundrum v. Cleveland Integrity Servs.,
No. 17-CV-55-TCK-tlw, 2017 U.S. Dist. LEXIS 130255 (N.D. Okla. Aug. 16, 2017) 11, 12

Horton v. Molina Healthcare, Inc.,
No. 17-cv-0266-CVE-JFJ, 2019 U.S. Dist. LEXIS 90377 (N.D. Okla. May 22, 2019) 14

In re Motor Fuel Temperature Sales Practices Litig.,
258 F.R.D. 671 (D. Kan. 2009) 16

In re Qwest Commc’ns Int’l, Inc. Sec. Litig.,
2006 U.S. Dist. LEXIS 71039 (D. Colo. 2006) 16

In re Skechers Toning Shoe Prods.,
 2012 U.S. Dist. LEXIS 113641 22

Johnson v. Tulsa,
 2003 U.S. Dist. LEXIS 26379 (N.D. Okla. 2003) 17

Lawson v. Procare CRS, Inc.,
 No. 18-CV-00248-TCK-JFJ, 2019 U.S. Dist. LEXIS 1695 (N.D. Okla. Jan. 4, 2019)..... 20

Lopez v. Santa Fe,
 206 F.R.D. 285 (D.N.M. 2002)..... 19

Lucas v. Kmart Corp.,
 234 F.R.D. 688 (D. Colo. 2006) 13, 17

Lynn’s Food Stores, Inc. v. U.S.,
 679 F.2d 1350 (11th Cir. 1982) 19, 20

Marcus v. Kan. Dept. of Revenue,
 209 F. Supp. 2d 1179 (D. Kan. 2002)..... 14, 17

McNeely v. Nat’l Mobile Health Care, LLC,
 2008 U.S. Dist. LEXIS 86741 (W.D. Okla. 2008) 16

Mullane v. Cent. Hanover Bank & Trust Co.,
 339 U.S. 306 (1950)..... 22

Phillips Petroleum Co. v. Shutts
 472 U.S. 797 (1985)..... 22

Pliego v. Los Arcos Mexican Rests., Inc.,
 313 F.R.D. 117 (D. Colo. 2016) 12, 19, 21

Rutter & Wilbanks Corp. v. Shell Oil Co.,
 314 F.3d 1180 (10th Cir. 2002) 13, 20

Sears v. Atchison, Topeka & Santa Fe Ry., Co.,
 749 F.2d 1451 (10th Cir. 1984) 11

Shook v. El Paso Cnty.,
 386 F.3d 963 (10th Cir. 2004) 12

Smith v. Lux Retail N. Am., Inc.,
 No. C 13-01579 WHA, 2013 U.S. Dist. LEXIS 83562 (N.D. Cal. June 13, 2013)..... 18

Smith v. Rae Venter Law Group,
 29 Cal. 4th 345 (2002) 18

<i>Solis v. Top Brass, Inc.</i> , Civil Action No. 14-cv-00219-KMT, 2014 U.S. Dist. LEXIS 122502 (D. Colo. Sep. 3, 2014)	20
<i>Tabor v. Hilti, Inc.</i> , 703 F.3d 1206 (10th Cir. 2013)	12
<i>Thacker v. Chesapeake Appalachia, L.L.C.</i> , 259 F.R.D 262 (E.D. Ky. 2009).....	24
<i>Tripp v. Rabin</i> , No. 14-CV-2646-DDC-GEB, 2016 U.S. Dist. LEXIS 87691 (D. Kan. July 6, 2016)	12
<i>Trujillo v. Colo.</i> , 649 F.2d 823 (10th Cir. 1981)	11
<i>Tuten v. United Airlines, Inc.</i> , 41 F. Supp. 3d 1003 (D. Colo. May 19, 2014)	11
<i>Wilkerson v. Martin Marietta Corp.</i> , 171 F.R.D. 273 (D. Colo. 1997)	14
Statutes	
15 Okla. Stat. § 751.....	2
15 Okla. Stat. § 753.....	5
29 U.S.C. § 216(b)	passim
78 OK Stat. § 52 (2014).....	3
Cal. Civ. Code. § 1542.....	9
Cal. Lab Code § 226.8	3
Cal. Lab. Code § 203	18
Cal. Lab. Code § 450	3
Cal. Lab. Code § 510	18
Cal. Lab. Code § 558	18
Fed. R. Civ. P. 23.....	passim
Fed. R. Civ. P. 23(a)	12
Fed. R. Civ. P. 23(e)	2, 11

Fed. R. Civ. P. 23(f)..... 6, 15
Fed. R. Civ. P. 30(b)(6)..... 4
Fed. R. Civ. P. Rule 23(b)..... 12
Fed.R.Civ.P. 23(c) 22, 24

Rules

8 C.C.R. 13520..... 18
Manual for Complex Litg. (Third) § 30.42..... 13

Regulations

Conte, Newberg on Class Actions
§ 8.39 (3rd Ed. 1992) 22
Manual for Complex Litigation, Settlement Notice
§ 21.312 (4th ed. 2004) 23

I. INTRODUCTION

This class and collective Action is brought on behalf of current and former truck drivers hauling products throughout the United States, including in California and Oklahoma, for Defendant John Christner Trucking, LLC (“JCT”). The Action is based on JCT’s alleged violations of federal and California wage and hour laws, as well as Oklahoma consumer protection law.

After nearly five years of intensive litigation, including extensive discovery and motion practice culminating in certified classes, a cross-appeal that was substantially briefed before the Tenth Circuit, and extensive arm’s-length negotiations between counsel, the Parties have reached a global settlement of the Action, memorialized in the proposed Joint Stipulation of Settlement and Release of Class and Collective Action (“Settlement”).¹ Plaintiff now seeks preliminary approval of the Settlement as to the proposed Class and approval of the Settlement as to the Collective.

The Parties have resolved the claims of approximately 5,647 truck drivers, for a total non-reversionary settlement amount of \$9,250,000. With this proposed Settlement, the Parties are resolving claims unlikely to have been prosecuted as individual actions. The Settlement provides an excellent benefit to the Classes and an efficient outcome in the face of expanding and highly risky litigation. The Settlement is fair, reasonable, and adequate in all respects, and Plaintiff respectfully requests that the Court grant the requested approval.

II. BACKGROUND

A. Procedural Background.

1. Plaintiff’s Complaint.

On April 13, 2017, Plaintiff filed a federal class and collective action against JCT in the Northern District of California—identical to the one currently before this Court. *See Thomas Huddleston v. John Christner Trucking, LLC, Case No. 3:17-cv-02081-RS* (Northern District of

¹ The Settlement is attached as **Exhibit A** to the accompanying Declaration of Carolyn H. Cottrell in Support of Plaintiff’s Motion for Preliminary Approval of Class and Collective Action Settlement (“Cottrell Decl.”).

California, filed on April 13, 2017). Plaintiff brought this class and collective action under the FLSA, California wage and hour laws, as well as the Oklahoma Consumer Protection Act, 15 Okla. Stat. §§ 751 *et seq.* (“OCPA”). ECF 1. Plaintiff alleges that because JCT misclassified Drivers as independent contractors, JCT failed to comply with numerous provisions of the California Labor Code and California Wage Orders. Plaintiff also alleged that JCT violated the OCPA through numerous misrepresentations and omissions of material fact, including: that Drivers will be treated as independent contractors, the income Drivers would earn, the miles Drivers would receive, and the nature of the economic opportunity JCT was offering to Drivers.

Following a contested motion on improper venue, on July 6, 2017, the Northern District of California dismissed the action without prejudice for improper venue. *See id.* at ECF 31. On July 12, 2017, Plaintiff filed this action in the Eastern District of California. *See Thomas Huddleston v. John Christner Trucking, LLC*, Case No. 1:17-cv-00532-LJO-SAB (filed on July 12, 2017). Following a contested motion to transfer, the case was subsequently transferred to this Court on September 28, 2017. *See* ECF 16.

2. JCT’s Motion for Judgment on the Pleadings and Plaintiff’s Motion for Conditional Certification.

On February 23, 2018, Plaintiff filed a Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b). ECF 58. JCT sought to depose opt-in plaintiffs prior to opposing the motion, which Plaintiff opposed. Cottrell Decl., ¶ 15. On March 7, 2018, Plaintiff filed a motion to quash JCT’s notices of depositions of FLSA opt-in plaintiffs, which was granted on March 14, 2018. ECF 60, 65.

Soon thereafter, JCT filed a motion for judgment on the pleadings on April 6, 2018, arguing that: (1) Plaintiff’s claims under California law were preempted by the Federal Aviation Administration Authorization Act of 1994; (2) Plaintiff’s expense reimbursement claims were

preempted by the Federal Leasing Regulations; (3) no private right of action exists to enforce California Labor Code §§ 226.8 and 450; and (4) Plaintiff's OCPA claims should be dismissed. *See* ECF 74. Plaintiff conceded there is no independent private rights of action as to the following causes of action: Plaintiff's fourteenth (pursuant to the Oklahoma Deceptive Trade Practices Act 78 O.S. §§ 52, *et seq.*); sixteenth (claim for unjust enrichment); eighth (Cal. Lab Code Section 450); and ninth cause of action (Cal. Lab Code Section 226.8). The Court granted JCT's motion in part with respect to the conceded claims. *See* ECF 134, 78, p. 10 n. 7. JCT subsequently attempted to stay this action and move to certify the Court's order regarding its motion for judgment on the pleadings for interlocutory appeal, *see* ECF 137-139; however, the Court denied both following full briefing on April 19, 2019. ECF 155.

On May 1, 2018, the Court granted in part Plaintiff's Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b), conditionally certifying a nationwide collective of all current and former individuals who provide transportation services for JCT within the United States at any time during the period beginning May 1, 2015 and ending May 1, 2018. *See* ECF 76, at pp. 6-7. A total of 525 individuals filed their consent to opt-in to the FLSA collective in this Court. *See, e.g.*, ECF 224; *but see*, ECF 119 (notice to withdraw opt-in consent form).

3. Pre-certification discovery and additional motion practice.

Plaintiff conducted significant pre-certification discovery. Cottrell Decl., ¶¶ 12-14. In total, Plaintiff propounded 78 requests for production of documents (191 total including merits-based requests), 21 special interrogatories (25 total including merits-based requests), 27 requests for admission, and two third-party subpoenas to various tracking agencies. *See* Cottrell Decl., ¶ 13. Plaintiff further responded to JCT's 22 (44 total including merits-based requests) special interrogatories, 44 requests for production of documents (47 total including merits-based requests), 5 requests for admission (which were merits-based requests), and provided

supplemental responses to both. *Id.* JCT produced a total of approximately 28,607 pages of documents and data, which included myriad policies and procedures, independent contractor agreements, lease agreements, personnel files, time and pay data, marketing information and advertisements, training and orientation documents, and delivery and shipment information. *Id.*

Plaintiff also took the depositions of multiple JCT corporate witnesses: Shannon Crowley (a two-day deposition of JCT's Rule 30(b)(6) witness), Sheila Bane, Trish Boone, Darryl Christner, Lori Loy, Cheryl Owens, Quek Song, and Andrea Woodruff. *Id.*, ¶ 14. Plaintiff further defended the depositions of multiple JCT drivers: Plaintiff Thomas Huddleston, Jimmy Clark, Anthony Connors, James Tieglund, and Noel Zaragoza. *Id.* Through the meet and confer process, the parties also stipulated on April 15, 2019, to the authenticity and uniformity of the Lease Agreement and of the Independent Contractor Operator Agreement provided to all Drivers. *Id.*

The parties engaged in substantial motion practice relating to discovery and case management issues. *Id.*, ¶ 15. Plaintiff filed multiple motions including: a motion to extend time to continue class certification deadlines to conduct further discovery regarding new information and documents, which was later granted, ECF 110, 118; a motion to compel corporate witness depositions, which was later withdrawn, *see* ECF 95, 102; a motion to compel the deposition of JCT's Chief Financial Officer, Darryl Christner, which was later granted, *see* ECF 127, 130, 133; another motion to extend time to continue class certification, which was later withdrawn, *see* ECF 153, 160; a motion for protective order and accompanying motion for expedited hearing on the motion for protective order to preclude JCT from deposing opt-in plaintiffs and class members following the close of class discovery, which were denied and granted respectively, *see* ECF 178, 179, 185, 189. *See* Cottrell Decl., ¶ 15.

On April 19, 2019, almost immediately preceding Plaintiff's deadline to file his motion for class certification, JCT filed a motion to "determine applicable law," which would have

fundamentally altered the claims at issue and certification analysis. *See* ECF 158-159. JCT requested the Court to “clarify” that Oklahoma wage and hour law, and not California wage and hour law, applied to the claims of the California Class. *Id.* This would have effectively dismissed the California Class’s claims at the same time a motion to certify those claims would be pending. Cottrell Decl., ¶ 16. Plaintiff filed a motion to strike JCT’s motion and a motion to accelerate hearing on Plaintiff’s motion to strike, which was granted in part. ECF 176-177, 180. Following full briefing, the Court granted Plaintiff’s motion to strike and JCT’s motion was stricken without prejudice. ECF 196.

4. Plaintiff’s motion for class certification and JCT’s motion to reconsider the Court’s certification order.

After years of discovery and motion practice, the Parties litigated a contested motion for class certification. Cottrell Decl., ¶¶ 17-19. On April 22, 2019, Plaintiff sought to certify a California Class, comprised of all Drivers who (1) performed transportation services for JCT in the State of California; (2) entered into an ICOA with JCT; (3) entered into a Lease Agreement with JCT; and (4) were classified as independent contractors. *See* ECF 162. Plaintiff proposed the California Class would assert claims under the California Labor Code and Wage Orders for work performed exclusively within California’s borders. Plaintiff also sought to certify, under Section 753 of the OCPA, an Oklahoma Class, comprised of all Drivers who (1) provided transportation services for JCT; (2) entered into an ICOA with JCT; and (3) entered into a Lease Agreement with JCT. *See id.* These claims were based on allegations concerning JCT’s national advertising campaign, as well as JCT’s misrepresentations and omissions at orientation. *Id.* JCT opposed the motion in its entirety. *See, e.g.*, ECF 201.

On January 30, 2020, the Court issued an order granting in part Plaintiff’s Motion for Class

Certification. *See* ECF 213 (“Certification Order”). The Court certified the California Class² on Counts 2-7 and 10-11 of the Complaint (for violations of California wage and hour laws) in its entirety, and further held that California misclassification law applied to determine whether class members were employees or independent contractors. *See* ECF 213. The Court further certified an Oklahoma Class³ on Count 13 of the Complaint (for violations of the OCPA), to the extent it was based on misrepresentations and omissions that can be traced to orientation, but not on JCT’s national advertising campaign. *See ibid.*

JCT sought reconsideration of the Court’s Certification Order regarding the Court’s certification of both classes, which the Court granted in part. *See* ECF 222-223, 233. Specifically, the Court, substituted Oklahoma misclassification law for California’s, leaving the California Class’s claims under California statutory wage and hour laws certified. *See* ECF 233 (“Reconsideration Order”). The Court further denied JCT’s motion to reconsider certification of the Oklahoma Class. *Ibid.*

5. JCT’s Rule 23(f) petition, Plaintiff’s cross-petition, and the subsequent appeal.

JCT filed a Rule 23(f) petition, seeking review in the Tenth Circuit Court of Appeals of both the Certification Order and the Reconsideration Order. *See* ECF 236; Cottrell Decl., ¶ 20. Plaintiff opposed the Petition, and further sought a conditional cross-appeal of the Reconsideration Order, in the event the Tenth Circuit granted JCT’s petition. Cottrell Decl., ¶ 20.

² “All current and former individuals, to the extent they performed transportation services for John Christner Trucking, LLC within California, who (1) entered into an Independent Contractor Operator Agreement with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, LLC, and (3) were classified as independent contractors.” ECF 213 at p. 38.

³ “All current and former individuals who provide transportation services for John Christner Trucking, LLC within the United States, who (1) entered into an Independent Contractor Operator Agreement with JCT, and (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, LLC.” ECF 213 at p. 38.

On February 26, 2021, the Tenth Circuit granted JCT's Rule 23(f) Petition as well as Plaintiff's cross-petition (ECF No. 246). *Id.*; ECF 246.

On November 12, 2021, JCT filed the first brief on appeal. Cottrell Decl., ¶ 21. On December 13, 2021, Plaintiff filed the second brief on appeal and cross-appeal. *Id.* JCT's and Plaintiff's deadlines to file the third and fourth briefs, respectively, on appeal and cross-appeal were subsequently vacated in light of the Parties' Settlement. *Id.*

6. Settlement Conference and the Resulting Settlement.

Following the Tenth Circuit's order granting JCT's petition and Plaintiff's cross-petition to appeal, Counsel for the Parties met and conferred on multiple occasions with Chief Circuit Mediator David Aemmer (Aemmer) to discuss the possibility of mediating the case prior to proceeding with the pending appeal and cross-appeal. On April 7, 2021, the Parties participated in a Mediation Conference with Aemmer. *Id.* ¶ 22. On September 8, 2021, the Parties remotely attended a full-day settlement conference with Aemmer but the case was not resolved. *Id.* Following further numerous, intensive negotiations at arms' length under the guidance of Aemmer, the Parties agreed in principle to settle this matter, culminating in a Memorandum of Understanding that was executed on February 25, 2022. *Id.* ¶ 23. Over the next few months, the Parties further negotiated at length the terms of the settlement at arms' length and with the assistance of Aemmer. *Id.* ¶ 24. Ultimately, a long-form settlement agreement was fully executed on May 12, 2022. *Id.* ¶ 25, Ex. A.

On May 18, 2022, the Ninth Circuit court granted the Parties' joint motion for limited remand and abatement of the appeals in light of the Parties' pending settlement. ECF 268.

III. KEY TERMS OF SETTLEMENT

Under the Settlement, JCT will pay a non-reversionary Gross Settlement Amount of \$9,250,000 to resolve this litigation. Settlement, ¶¶ I.20, III.1. This amount includes all payments

to the Class Members; proposed attorneys' fees and costs; proposed service award; the costs of settlement administration (estimated at \$79,500, *see* Cottrell Decl., ¶ 34); the payment to the California Labor and Workforce Development Agency ("LWDA") under the California Private Attorneys General Act ("PAGA"); and any other obligation of JCT under this Settlement. *See* Settlement, ¶ III.1. The Net Settlement Amount, the amount distributed to Class Participants, is approximately \$5,812,475.⁴ Cottrell Decl., ¶ 27; *see* Settlement, ¶ I.24. This amount is the Gross Settlement Amount less costs of settlement administration, proposed attorneys' fees and costs, proposed service award, and the PAGA payment. Settlement, ¶ I.24.

The entire Gross Settlement Amount will be disbursed pursuant to the terms of the Settlement, and none of it will revert to JCT. *Id.*, ¶ I.20. Other key terms of the Settlement include:

- California Class: A portion of the Net Settlement Amount will be distributed to California Class Members, who are defined as "[a]ll current and former individuals, to the extent they performed transportation services for John Christner Trucking, LLC (JCT) within California from April 12, 2013 to the date the Court grants preliminary approval of the settlement (Preliminary Approval Date), who (1) entered into an Independent Contractor Operating Agreement (ICOA) with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, LLC, and (3) were classified as independent contractors" between April 12, 2013, through the Preliminary Approval Date. Settlement, ¶¶ I.5, I.10.
- Oklahoma Class: A portion of the Net Settlement Amount will be distributed to Oklahoma Class Members, who are defined as "[a]ll current and former individuals who provide(d) transportation services for JCT within the United States, who (1) entered into an ICOA with JCT, and (2) entered into a Lease Agreement with JCT or Three Diamond Leasing, from April 12, 2014 to the Preliminary Approval Date." Settlement, ¶ I.5.
- FLSA Collective Members:⁵ A portion of the Net Settlement Amount will be distributed to 518 individuals who validly submitted written consents to join this Action under 29 U.S.C. § 216(b). Settlement, ¶ I.5, Ex. 1. These individuals are defined as "[a]ll current and former individuals who provided transportation services for JCT within the United States, between May 1, 2015 and the Preliminary Approval Date, who (1) entered into an ICOA with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing,

⁴ This excludes the \$25,000 allocated in PAGA penalties (part of the \$100,000 PAGA Payment) which are allocated for distribution to Class Participants. Cottrell Decl., ¶ 27.

⁵ The California Class, Oklahoma Class, and FLSA Collective Members, are collectively referred to as Class Members.

(3) were classified as independent contractors, and (4) validly opted in to the FLSA collective on or before February 14, 2020 (FLSA Collective Members).” *Id.*, ¶ I.5.

- Notice of Settlement: The Settlement Administrator will send a Notice to all Class Members via U.S. mail. *Id.*, ¶¶ I.8, VI.2, Ex. 2 (Notice of Settlement). The Settlement Administrator will re-mail undeliverable mailings to those with a forwarding address, and further conduct skip-tracing or other computer searches to ensure an updated address is found for any further re-mailings. *Id.*, ¶ VI.2.
- Class Participants: Class Members do not have to submit claims to receive a settlement payment. *Id.*, ¶ VI.3. Each Class Member will have 60 days from the mailing of the Notice of Settlement to request for exclusion (opt-out) or object to the Settlement. *Id.*, ¶¶ VI.3-4.
- PAGA Payment: There will be a direct monetary distribution to the LWDA and California Class Members under the PAGA. Settlement, ¶¶ VII.2.d. Pursuant to the PAGA, of the \$100,000 total PAGA Payment, \$75,000 (75% of the \$100,000 allocation) will be paid to the LWDA, the remaining \$25,000 (25% of the \$100,000 allocation) will be distributed *pro rata* to California Class Members. *See id.*
- Released Claims: Class Participants will release claims under federal law, state law, including California law or Oklahoma law, or local law, limited to those that were or could have been asserted, whether known or unknown, or arising out of or connected to facts, theories, and claims pled in the Complaint, that Class Participants hold or have held before the Effective Date (“Released Claims”). *Id.*, ¶ I.33. In addition to the Released Claims, Plaintiff and the FLSA Collective Members will also release any and all claims, known or unknown, under the FLSA, that were pled or could have been pled based on the factual allegations of the Complaint. *Id.*, ¶ I.33. Upon the Effective Date, all Class Participants will also waive their rights and benefits as to only the Released Claims based on or arising out of the same factual predicates of the Complaint, through the Preliminary Approval Date, Cal. Civ. Code. § 1542. *Id.*, ¶ X.1.
- Released Parties: The Released Claims will apply to the Released Parties, including JCT and its present and former parent companies, subsidiaries, divisions, affiliates, successors, predecessors, related companies, and 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. *Id.*, ¶ I.34.
- Appointment of Administrator: The parties request that Settlement Services, Inc. (“SSI”) be appointed to serve as Settlement Administrator, to undertake its best efforts to ensure that the Notice of Settlement and settlement checks are provided to the current addresses of Class Members and Class Participants, respectively, to provide weekly updates, to perform tax reporting, to create and maintain a settlement website, to create and maintain a toll-free telephone number to field inquiries, process opt-out requests, to calculate and distribute settlement payments, and to be available to respond to administrative queries. *Id.*, ¶¶ I.37, III.2, III.4, V.1-2, VI.1; Cottrell Decl., ¶ 34.
- Pro Rata Distribution: Each Class Participant (Class Members who do not validly opt-out

of the Settlement) will receive a *pro rata* portion of the Net Settlement Amount based on the number of settlement shares they are assigned. Settlement, ¶¶ VII.2-3. Settlement Shares are based on the number of workweeks the individual worked compared to the total number of workweeks all Class Participants worked. *Id.*, ¶¶ VII.2-3. FLSA Collective Members will receive 1 settlement share per workweek (FLSA Workweeks). *Id.*, ¶ VIII.2.b. To reflect the applicable value of state law claims, Class Participants will receive: 2 settlement shares per workweek for workweeks during which he or she performed any work in California (California Workweeks); and 2 settlement shares per workweek for workweeks during which he or she performed work in the United States (Oklahoma Workweeks). *Id.* 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. *Id.*, ¶ VII.3.c. 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. *Id.*

- Tax Allocation: The Settlement provides that all individual settlement awards to Class Participants will be reported on an IRS Form 1099. *Id.*, ¶ III.4.
- Service Award: The Settlement provides that Plaintiff will seek a service payment to Named Plaintiff Thomas Huddleston, of \$25,000 (subject to Court approval) to compensate him for his time and effort in service of the Classes, as well as in exchange for a general release. *Id.*, ¶¶ I.35, III.2, X.2; *see also*, Cottrell Decl., ¶¶ 60-62. The proposed service award in the amount of \$25,000 for Plaintiff Huddleston represents 0.27% of the Gross Settlement Amount. Cottrell Decl., ¶ 30.
- Attorneys' Fees and Costs: Class Counsel's attorneys' fees and litigation expenses are included in the Gross Settlement Amount. Settlement, ¶ IV.1. The Settlement provides that JCT does not oppose a fee application of up 33.33% of the Gross Settlement Amount (i.e., \$3,083,025), plus reasonable out-of-pocket costs of up to \$150,000. *See id.*; *see also*, Cottrell Decl., ¶¶ 63-69.
- Cy Pres. Any funds still remaining after the 180-day check cashing period will be redistributed to Class Participants on a prorated basis, and any additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed funds prior to redistribution. Settlement, ¶ VII.9. Following an additional 180-day check cashing period for the redistributed checks, any remaining funds will be revert to Legal Services Corporation, the Parties' agreed-upon *cy pres* beneficiary. *Id.* The organization bears a substantial nexus to the interests of the Class Members because it is a grant-making organization that provides financial support for civil legal aid to low-income Americans. Cottrell Decl., ¶¶ 40-41.

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT AS TO THE CLASSES AND APPROVAL OF THE SETTLEMENT AS TO THE COLLECTIVE

A. The Court Should Grant Preliminary Approval of the Settlement as to the California and Oklahoma Classes.

Courts strongly favor settlement as a method for resolving disputes. *See Amoco Prod. Co. v. Fed. Power Comm'n*, 465 F.2d 1350, 1354 (10th Cir. 1972); *see also Sears v. Atchison, Topeka & Santa Fe Ry., Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984); *Trujillo v. Colo.*, 649 F.2d 823, 826 (10th Cir. 1981) (citing “important public policy concerns that support voluntary settlements”). This is especially true in complex class actions, as is the case here. *See Big O Tires, Inc. v. Bigfoot 4x4, Inc.*, 167 F. Supp. 2d 1216, 1229 (D. Colo. 2001). “[The] presumption in favor of voluntary settlement agreements is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1007 (D. Colo. May 19, 2014); *see also, Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980) (“In the class action context in particular, there is an overriding public interest in favor of settlement. . . .”).

Fed. R. Civ. P. 23(e) requires judicial approval for any compromise of claims brought on a class-wide basis. “Preliminary approval of a class settlement requires the Court to assess (1) whether the matter is suitable for certification as a class action under Rule 23 and (2) the overall fairness of the proposed settlement . . . [and] the adequacy of the notice the parties propose to send out.” *Gundrum v. Cleveland Integrity Servs.*, No. 17-CV-55-TCK-tlw, 2017 U.S. Dist. LEXIS 130255, at *13 (N.D. Okla. Aug. 16, 2017) (internal quotation marks and citation omitted). At the preliminary approval stage, the “objective of the court's inquiry at the preliminary approval stage is to determine whether to direct notice of the proposed settlement to class members, permit the opportunity for objections, and schedule a fairness hearing.” *Id.* (citing *Tripp*

v. Rabin, No. 14-CV-2646-DDC-GEB, 2016 U.S. Dist. LEXIS 87691, 2016 WL 3615572, at *2 (D. Kan. July 6, 2016)). “Because preliminary approval is just the first step, courts apply a ‘less stringent’ standard than that at final approval.” *Tripp*, 2016 U.S. Dist. LEXIS 87691, at *6.

The standard for approval of a settlement is that the settlement is fair, adequate and reasonable to the class. *Pliego v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 128 (D. Colo. 2016). A trial court may certify a class when it determines the proposed class satisfies the prerequisites of Federal Rule of Civil Procedure 23(a), and one of the requirements of Rule 23(b). *See Shook v. El Paso Cnty.*, 386 F.3d 963, 971 (10th Cir. 2004); *Tabor v. Hilti, Inc.*, 703 F.3d 1206 (10th Cir. 2013); *Gundrum*, 2017 U.S. Dist. LEXIS 130255, at *14 (citing *Pliego*, 313 F.R.D. at 128).

Plaintiff now asks this Court to take the first step in the review process, and preliminarily approve the California and Oklahoma Classes for settlement approval. Given the complexity of this litigation, the potential and continued risks if the Parties were to proceed with their cross appeals and then to trial, the Settlement represents a favorable resolution of this Action and eliminates the risk that the Classes might otherwise recover nothing. This Court, having already granted class certification as to virtually identical class definitions for the California and Oklahoma classes, has already determined that the Classes satisfy the prerequisites for Rule 23. *See* ECF 213 at p. 38. The Court should thus certify the Classes for settlement purposes.

1. The Proposed Settlement is Fair, Reasonable, and Adequate, and Should be Preliminarily Approved.

The Tenth Circuit has identified four factors to determine whether a settlement is fair, reasonable, and adequate: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future

relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002)); *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). As demonstrated below, the Settlement satisfies each of the criteria and warrants this Court’s preliminary approval.

a. The proposed Settlement is the product of extensive arm’s-length negotiations between experienced counsel and assisted by an experienced Circuit Court mediator.

Where, as here, a settlement results from “arm’s length negotiations between experienced counsel after significant discovery [has] occurred, the Court may presume the settlement to be fair, adequate, and reasonable.” *Lucas*, 234 F.R.D. at 693; *see also* MANUAL FOR COMPLEX LITIG. (THIRD) § 30.42, at 238. This action has been litigated for approximately five years. During this time, Class Counsel has conducted substantial discovery, litigated nearly a dozen contested motions, all culminating in certified Classes and a conditionally-certified Collective. Cottrell Decl., ¶¶ 11-21. Class Counsel reviewed and analyzed tens of thousands of pages of documents, interviewed countless Drivers, and performed intensive research of the laws applicable to the claims and defenses. *Id.*, ¶¶ 42-44.

During the pendency of JCT’s appeal and Plaintiff’s cross-appeal, the Parties began settlement discussions and negotiations, which were conducted at arm’s length and with the assistance of a highly experienced Circuit Court mediator. *Id.*, ¶ 43. The negotiation process was hard-fought and protracted over months, including several settlement conferences with the Circuit Court mediator and numerous drafts. *Id.* Plaintiff submitted comprehensive mediation statements and preliminary damages studies, which were thoroughly prepared by Class Counsel and based on years of discovery, documents, data, research, and dozens of interviews. *Id.*

Courts in this Circuit have found settlements fairly and honestly negotiated where “[t]he completeness and intensity of the mediation process, coupled with the quality and reputations of

the mediator, demonstrate a commitment by the [p]arties to a reasoned process for conflict resolution that took into account the strengths and weaknesses of their respective cases and the inherent vagaries of litigation.” *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 285 (D. Colo. 1997); *see also Horton v. Molina Healthcare, Inc.*, No. 17-cv-0266-CVE-JFJ, 2019 U.S. Dist. LEXIS 90377, at *2-3 (N.D. Okla. May 22, 2019) (finding a proposed class action settlement agreement fair and reasonable because, inter alia, it was “negotiated in good faith at arms’ length between experienced attorneys familiar with the legal and factual issues of this case aided by an experienced and neutral third-party mediator”); *Ashley v. Reg’l Transp. Dist.*, 2008 U.S. Dist. LEXIS 13069, at *15-22 (D. Colo. 2008) (settlement fairly and honestly negotiated where the parties engaged in formal settlement mediation conference and negotiations over four months); *see also Marcus v. Kan. Dept. of Revenue*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002) (“When a settlement is reached by experienced counsel after negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable.”). The Settlement is a product of serious, informed, and non-collusive negotiations among experienced counsel and Circuit Court mediator, and warrants preliminary approval.

b. Serious questions of law and fact exist and the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation.

Numerous, serious questions of law and fact exist in this Action, all of which are the subject of considerable risk if this case were to continue to be litigated.⁶ Cottrell Decl., ¶¶ 53-56. While Plaintiff successfully obtained certification of the California Class, that order was modified to

⁶ *See also, Wilkerson*, 171 F.R.D. at 285 (the value of an immediate recovery, the “monetary worth of the settlement”, “is to be weighed not against the net worth of the defendant, but against the possibility of some greater relief at a later time, taking into consideration the additional risks and costs that go hand in hand with protracted litigation.” (citing *Gottlieb v. Wiles*, 11 F.3d 1004, 1015 (10th Cir. 1993))).

substitute Oklahoma misclassification law for that of California. *Id.*, ¶ 53. While Plaintiff remains confident he would have successfully prosecuted this case even under Oklahoma misclassification law, as JCT pointed out in its appellate briefing, plaintiffs *rarely* succeed in prosecuting misclassification claims under Oklahoma standards. *Id.* If Plaintiff could not show uniform misclassification under Oklahoma law, every wage and hour claim at issue in this case would fail in unison. *Id.*

Of course, this risk assumes the Tenth Circuit would have fully affirmed this Court's Certification Order. *Id.*, ¶ 54. The risk of the Tenth Circuit vacating this Court's Certification Order was, of course, very real. While Plaintiff remains confident his efforts to maintain the certification decision would prevail, it cannot be ignored that the granting of a Rule 23(f) petition is entirely discretionary, and Circuit Courts often grant them when they have concerns over a District Court's certification decision. *Id.* Misclassification class actions are notoriously difficult to certify, and there was a very real risk the Tenth Circuit would reverse this Court's Certification Order. *Id.*

But even assuming Plaintiff successfully defended this Court's certification decision, Plaintiff would still have to prove these claims. *Id.*, ¶ 55. This includes not only the threshold misclassification inquiry, but the labor code claims themselves. *Id.* After all, misclassification, alone, does not violate the law. Plaintiff still would have had to prove off-the-clock work was taking place, and done so on a uniform basis. *Id.* If Plaintiff were to fail in that regard, the risk of decertification on the eve of trial is always a possibility in cases such as these. *Id.*

And then there are the risks regarding the Oklahoma claims. *Id.*, ¶ 56. This Court's Certification Order was based on an inference of reliance theory. *See* ECF 213, at pp. 34-35. Plaintiff believes this decision was correct, and remains confident in his ability to defend this decision on appeal. Cottrell Decl. Nevertheless, if the Tenth Circuit denied an inference of

reliance, there is a significant chance the Oklahoma Class would have been decertified. *Id.* And even if the Court’s certification decision was upheld, Plaintiff still would have had to prove – from the representations and omissions taking place only at orientation – that this limited pool of evidence was sufficient to demonstrate liability. *Id.*

These are serious questions of law and fact that have been vehemently litigated throughout this litigation. “The presence of such doubt tips the balance in favor of settlement because settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.” *McNeely v. Nat’l Mobile Health Care, LLC*, 2008 U.S. Dist. LEXIS 86741, at *31-41 (W.D. Okla. 2008) (citing *In re Qwest Commc’ns Int’l, Inc. Sec. Litig.*, 2006 U.S. Dist. LEXIS 71039, at *16-18 (D. Colo. 2006)).

Moreover, the complexity, uncertainty, additional expense, and duration of further litigation favor preliminary approval of the Settlement. *See In re Motor Fuel Temperature Sales Practices Litig.*, 258 F.R.D. 671, 681 (D. Kan. 2009) (granting preliminary approval because, *inter alia*, “[t]he costs of continued litigation are high, and it is possible that plaintiffs could receive little or no pecuniary relief”); *Ashley*, 2008 U.S. Dist. LEXIS 13069, at *15-22. “The class will be well compensated, relatively speaking, and is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted.” *McNeely*, 2008 U.S. Dist. LEXIS 86741, at *31-41.

This Settlement represents not only a meaningful, immediate recovery for the California and Oklahoma Classes, but also one without any risk or additional expenses of further litigation. Cottrell Decl., ¶¶ 57-58. This benefit must be considered to the risk that the Classes may recover nothing after appeals, contested trial, and most likely, further appeals, possibly years into the future, or that litigation would deplete funds available to satisfy a judgment. *See id.*, ¶ 57. These factors thus support preliminary approval of the proposed Settlement.

c. The Parties agree that the Settlement is fair and reasonable, further supporting preliminary approval.

“Counsel[‘s] judgment as to the fairness of the agreement is entitled to considerable weight.” *Childs v. Unified Life Ins. Co.*, No. 10-CV-23-PJC, 2011 U.S. Dist. LEXIS 138818, at *37 (N.D. Okla. Dec. 2, 2011) (quoting *Lucas*, 234 F.R.D. at 695 and *Marcus*, 209 F. Supp. 2d at 1183)). “In addition to considering the judgment of the parties with respect to the proposed settlement, the Court should also ‘defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs.’” *Johnson v. Tulsa*, 2003 U.S. Dist. LEXIS 26379, at *39 (N.D. Okla. 2003).

Here, Class Counsel and JCT’s counsel – law firms with great experience in complex class litigation, particularly in truck driver misclassification cases – have agreed to settle this Action, only after class certification, significant appellate briefing, and months of negotiation under the guidance of a Circuit Court mediator. Cottrell Decl., ¶ 42. Class Counsel believes that the settlement amount is fair and reasonable in light of their extensive investigation, motion practice, the risks of continued litigation, and their overall experience. *Id.*, ¶¶ 42-45, 59. Plaintiff and Class Counsel further recognize the great expense and length of proceedings necessary to continue this litigation against JCT through the current cross appeals, trial, and any future appeals. *Id.*, ¶¶ 45, 51.

Based on Class Counsel’s estimates, the Gross Settlement Amount of \$9,250,000 represents a significant portion of the total calculated exposure at trial. *Id.*, ¶ 46. Class Counsel determined a realistic calculated exposure is approximately \$84,632,862. *Id.* Specifically, Class Counsel calculated the wage and hour claims represent approximately \$49,292,439 of the calculated exposure, and the Oklahoma economic opportunity claims represent approximately \$35,340,423 of the calculated exposure. *Id.* Put another way, the Gross Settlement Amount

represents approximately 10.93% of the calculated exposure at trial. *Id.*

To have obtained such a result at trial, Plaintiff would have to prove not only that Class Members were misclassified following a successful cross-appeal, Plaintiff would then have to prove that Oklahoma Class Members are owed the net amount of how much JCT represented they could make, less how much they in fact made, as well as prove that the overall driving opportunity presented to them by JCT was unfair and deceptive. *Id.*, ¶ 47. Plaintiff would have had to further prove that California Class Members suffered an average of at least 2 California Labor Code violations each pay period, and that their business expenses occurred during the class period, in the State of California.⁷ *Id.*

Class Counsel further recognizes there are myriad methods to compute damages for the Oklahoma claims. *Id.*, ¶ 48. All of these would have been the subject of substantial and costly economic expert discovery. *Id.* It is far from certain that the economic measure of damages for this claim that ultimately went to a jury – assuming the Class claims remained certified – would have reflected Plaintiff’s “best case scenario.” *Id.*

⁷ There is also a significant chance that the Court would limit PAGA penalties by declining to stack penalties (i.e., assess multiple penalties for derivative violations for a particular pay period for a particular employee), or simply exercise its discretion to reduce them altogether. *Smith v. Lux Retail N. Am., Inc.*, No. C 13-01579 WHA, 2013 U.S. Dist. LEXIS 83562, at *9 (N.D. Cal. June 13, 2013) (“For the single mistake of failing to include commissions in the overtime base, plaintiff has asserted five (count them, five) separate labor code violations that could lead to statutory penalties. One is a penalty for failure to pay overtime at the appropriate rate (§§ 510, 558). Another is for denying employees minimum wage and overtime (§ 1194). But is it plausible that we would really pile one penalty on another for a single substantive wrong?”). On the derivative claims, there are substantial questions as to whether individuals who sporadically worked in California could recover them, and even then, JCT would have argued that no penalties for waiting-time violations can be awarded unless the failure to pay wages is “willful.” *See* Cal. Lab. Code § 203; 8 C.C.R. 13520 (“[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due.”); *Smith v. Rae Venter Law Group*, 29 Cal. 4th 345, 354 n.2 (2002) (holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties).

Given the risks, delays, and uncertainty inherent in continued litigation, Plaintiff and Class Counsel believe that the Settlement is fair and reasonable to avoid the cost and uncertainty of continuing litigation. *Id.*, ¶¶ 49-59. The Settlement was further endorsed by the Circuit Court mediator. *See id.*, ¶¶ 42-44. This factor thus supports the Court’s preliminary approval of the proposed Settlement. *See Lopez v. Santa Fe*, 206 F.R.D. 285, 292 (D.N.M. 2002) (“[the] trial court is entitled to rely upon the judgment of experienced counsel for the parties . . . Indeed, the trial judge, absent fraud, collusion, or the like, should hesitate to substitute its own judgment for that of counsel.”).

2. Near Identical Definitions of the Proposed Classes Have Already Been Certified, and Should Continue to Be Certified Here for Settlement Purposes.

This Court has already granted class certification as to nearly identical class definitions for the California and Oklahoma Classes and has already determined that these Classes satisfy the prerequisites for Rule 23. *See* ECF 213 at p. 38; *see also id.* at pp. 5 (numerosity); 6 (adequacy); 18-35 (common issues predominate) 18 (typicality).⁸ The California and Oklahoma Classes should remain certified for settlement purposes as well.

B. The Court Should Grant Approval of the Settlement as to the Collective.

The standard for approval of an action arising under the FLSA requires only a determination the proposed settlement is a “fair and reasonable resolution of a *bona fide* dispute over FLSA provisions.” *Pliego v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 127-125 (D. Colo. 2016) (citing *Lynn’s Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1354 (11th Cir. 1982)); *see*

⁸ The proposed Settlement’s definitions of the California and Oklahoma Classes are nearly identical to those already certified by the Court. To the extent they differ, aside from typographical differences, under the Settlement, the California Class and Oklahoma Class limits the class period to: between April 13, 2014 and April 12, 2013, respectively, through the date of preliminary approval. *Compare* Settlement, ¶ I.5 with ECF 239 (setting class period as July 12, 2017).

also *Lynn's Food Stores, Inc.*, 679 F.2d at 1354 (recognizing courts rely on the adversarial nature of a litigated FLSA case resulting in settlement as indicia of fairness).

Under *Lynn's Food Stores*, a district court may find that a proposed settlement agreement resolves a *bona fide* dispute when it “reflect[s] a reasonable compromise over issues, such as FLSA coverage or computation of back wages that are actually in dispute.” 679 F.2d at 1354. “Parties requesting approval of an FLSA settlement must provide the Court with sufficient information to determine whether a bona fide dispute exists”, such as, among others, a description of the dispute, plaintiff’s justification for the unpaid wages, and the employer’s justification for disputing the overtime wages. *Solis v. Top Brass, Inc.*, Civil Action No. 14-cv-00219-KMT, 2014 U.S. Dist. LEXIS 122502, at *4 (D. Colo. Sep. 3, 2014) (citing *Baker v. Vail Resorts Mgmt. Co.*, Civil Action No. 13-cv-01649-PAB-CBS, 2014 U.S. Dist. LEXIS 22812, 2014 WL 700096, at *1 (D. Colo. Feb. 24, 2014)).

Because the Tenth Circuit Court of Appeals has not definitively set out FLSA specific criteria to use when assessing the fairness and reasonableness of a proposed settlement agreement, some district courts have looked to the same factors used in evaluating the fairness of class action settlements under Fed. R. Civ. P. 23. *See Baker*, 2014 U.S. Dist. LEXIS 22812, at *5-6 (citing *Rutter & Wilbanks Corp.*, 314 F.3d at 1188); *but see, Lawson v. Procare CRS, Inc.*, No. 18-CV-00248-TCK-JFJ, 2019 U.S. Dist. LEXIS 1695, at *4, 10-11 (N.D. Okla. Jan. 4, 2019) (noting “the majority of districts” “have held that such approval [of FLSA settlements] is not necessary”). These factors are: (1) whether the parties fairly and honestly negotiated the settlement; (2) whether serious questions of law and fact exist which place the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *Id.*

Here, for the same reasons already addressed above, certification of the FLSA Collective and approval of the Settlement is warranted. This Court has already conditionally certified the FLSA Collective. The Settlement represents a *bona fide* dispute over whether FLSA Collective Members were actually misclassified and, as a result, were subject to wage and hour violations committed by JCT. The Settlement represents a fair and reasonable compromise of this *bona fide* dispute.

The Settlement also furthers the purpose of the FLSA. Once the settlement is found to be fair and reasonable, the Court may also determine whether the agreement undermines the purpose of the FLSA. *Pliego v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 130 (D. Colo. 2016). The “prime purpose” in enacting the FLSA “was to aid the unprotected, unorganized and lowest paid of the nation’s working population; that is, those employees who lacked sufficient bargaining power to secure for themselves a minimum subsistence wage.” *Brooklyn Savings Bank v. O’Neil*, 324 U.S. 697, 707 n.18, 65 S. Ct. 895, 89 L. Ed. 1296 (1945). To help further its goals, the FLSA provides that an employee or multiple employees may bring an action “on behalf of himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b).

The Settlement represents a reasonable compromise of the risks faced by Plaintiff and the FLSA Collective had this case proceeded to trial following protracted litigation and appeals. The Settlement also furthers the purposes of the FLSA by providing FLSA Collective Members with substantial recovery for their alleged unpaid overtime, that they may have otherwise been unable to recover. Importantly, all FLSA Collective Members will automatically receive a Settlement Award unless they exclude themselves from the Settlement, and will not release any claims unless they do so (thereby allowing each FLSA Collective Member to decide whether to participate in the Settlement or not). Because the settlement facilitates the FLSA and is a fair and reasonable resolution of a *bona fide* dispute, it should be approved as reasonable.

C. The Proposed Notice is Reasonable.

The Court must ensure that Class Members receive the best notice practicable under the circumstances of the case. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974). Procedural due process does not guarantee any particular procedure but rather requires only notice reasonably calculated “to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Rule 23(e)(1) requires that the Court “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “Notice” in this context consists of both the form and manner in which Class Members will be notified of the Settlement and the final fairness hearing. *Id.* The notice must “fairly apprise . . . prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests.” *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 423 (6th Cir. 2012) (internal quotations omitted).

Here, the proposed Notice to the Class and Collective (“Notice”), attached as Exhibit 2 to the Settlement, and manner of distribution negotiated and agreed upon by the Parties are “the best notice practicable.” Cottrell Decl., ¶ 70; Fed. R. Civ. P. 23(c)(2)(B). The proposed Notice fulfills the requirement of neutrality in class notices. Cottrell Decl., ¶ 72. *See* Conte, NEWBERG ON CLASS ACTIONS, § 8.39 (3rd Ed. 1992). It summarizes the proceedings necessary to provide context for the Settlement and summarizes the terms and conditions of the Settlement, including an explanation of how the Gross Settlement Amount will be allocated between the Plaintiff, Class Counsel, the Settlement Administrator, and the Class Members, as applicable, in an informative, coherent and easy-to-understand manner, all in compliance with the Manual for Complex Litigation’s recommendation that “the notice contain a clear, accurate description of the terms of

the settlement.” Cottrell Decl., ¶¶ 71-73; MANUAL FOR COMPLEX LITIGATION, Settlement Notice, § 21.312 (4th ed. 2004).

The Notice is written in plain and easily-understood language and clearly, fairly, and concisely describe the nature of the Action, the definition of the certified Classes, the Class claims and issues, that Class Members may object and appear personally or enter an appearance through an attorney if desired, that the Court will exclude from the Classes any member who requests exclusion, the binding effect of a class judgment on the Class Members and the releases, Class Counsel’s contact information, the Settlement Administrator’s contact information, the significant terms of the Settlement and the total amount JCT has agreed to pay the Classes and the FLSA Collective, and the Court approval process, including Class Counsel’s request as Class Counsel for attorney’s fees and reasonable expenses, as well as for a service award on behalf of Plaintiff. *See* Settlement, Ex. 2; *see also*, Cottrell Decl., ¶¶ 72-77. All Class Members have been identified and the Notices will be mailed directly to each Class Member, appropriate and reasonable efforts will be made by the Settlement Administrator to update the contact information in the database and to search for any outdated addresses, and a settlement website will be available for Class Members to review all relevant settlement documents and contact information. *See* Cottrell Decl., ¶¶ 71, 74-75.

The proposed Notice thus fairly apprises Class Members of the Settlement’s terms, the schedule for future events and deadlines, and their legal rights in connection with the proceedings. *See, e.g., Gooch*, 672 F.3d at 423 (“When a class has settled its claims, ‘[t]he contents of a . . . notice are sufficient if they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, . . . that any class member may appear and be heard at the hearing,’ . . . and ‘information [about] the class members’ right to exclude themselves and the results of failure to do so.’”

(internal citation omitted)); *Thacker v. Chesapeake Appalachia, L.L.C.*, 259 F.R.D 262, 272 (E.D. Ky. 2009) (finding that the proposed notice—similar to the notice proposed here—satisfied the requirements of Rule 23(c)(2)(B)). Because the proposed Notice clearly and concisely describe the terms of the Settlement and the awards and obligations for Class Members who participate, and because the Settlement Administrator will disseminate the Notice in a way calculated to provide notice to as many Class Members as possible, the Notice should be approved.

D. The Court Should Approve the Proposed Schedule.

The Settlement contains the following proposed schedule, which Plaintiff respectfully requests this Court approve:

Activity	Deadline
Deadline for JCT to provide Settlement Administrator SSI with the Class List	Within 28 days after the Preliminary Approval Date
Deadline for SSI to mail and email the Notice of Settlement to Class Members	Within 35 days after the Preliminary Approval Date
Deadline for Class Members to postmark requests to opt-out or file objections to the Settlement (“Opt-Out Deadline”)	60 days after the Settlement Administrator mails the Notice of Settlement
Deadline for SSI to provide all counsel and the Court with a final report (a) the final pro rata portion of each Class Participant and (b) the final number of Opt-Outs	Within 10 days after the Opt-Out Deadline
Deadline for filing Final Approval Motion	Within 30 days of the Opt-Out Deadline
Deadline for SSI to provide all Parties’ counsel with a statement detailing the Settlement Administration Costs and the notice administration process	At least 7 days prior to the Court’s Final Approval and Fairness Hearing
Final Approval and Fairness Hearing	Within 120 days after the Preliminary Approval Date
Effective Date	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

Activity	Deadline
	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. In this regard, 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 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.
Deadline for JCT to remit the Gross Settlement Amount to the Settlement Administrator	Within 28 days after Effective Date
Deadline for SSI to make payments under the Settlement to Class Participants, Plaintiff for the Service Award, Class Counsel for attorneys' fees and costs, and itself for Administration Costs	Within 35 days of the Effective Date
Deadline for SSI to redistribute uncashed check funds to Class Participants	As soon as practicable after the 180-day check-cashing deadline for individual settlement payments
Deadline for SSI to revert uncashed check funds to <i>cy pres</i> recipient	As soon as practicable after the 180-day check-cashing deadline for redistributed checks

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement as to the California and Oklahoma Classes and approval of the Settlement as to the FLSA Collective, in accordance with the schedule set forth herein.

Dated: June 17, 2022

Respectfully submitted,

/s/ Carolyn H. Cottrell

Carolyn H. Cottrell (admitted *pro hac vice*)

David C. Leimbach (admitted *pro hac vice*)

Michelle S. Lim (admitted *pro hac vice*)

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

2000 Powell Street, Suite 1400

Emeryville, California 94608

Telephone: (415) 421-7100

Facsimile: (415) 421-7105

ccottrell@schneiderwallace.com

dleimbach@schneiderwallace.com

mlim@schneiderwallace.com

Robert S. Boulter (admitted *pro hac vice*)

LAW OFFICES OF ROBERT S. BOULTER

1101 Fifth Avenue, Suite 235

San Rafael, California 94901

Telephone: (415) 233-7100

Facsimile: (415) 233-7101

rsb@boulter-law.com

Attorneys for Plaintiff, the putative Class
and Collective

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the for the United States District Court, Northern District of Oklahoma, by using the Court's Case Management/Electronic Case Filing (CM/ECF) system, on June 17, 2022.

I hereby attest that concurrence in the content of the attached document and authorization to file the attached document has been obtained from the other signatory indicated by a conformed signature (/s/) within the attached e-filed document.

Dated: June 17, 2022

Respectfully submitted,

/s/ Carolyn H. Cottrell
Carolyn H. Cottrell (admitted *pro hac vice*)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THOMAS HUDDLESTON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

JOHN CHRISTNER TRUCKING, LLC,

Defendant.

Case No. 4:17-cv-00549-GKF-FHM

**DECLARATION OF CAROLYN H. COTTRELL IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

I, Carolyn Hunt Cottrell, hereby declare as follows:

1. I am an attorney at law duly licensed and in good standing to practice law in the courts of California (No. 166977) and am admitted to practice *pro hac vice* before the Court in this action. I am a member in good standing of the State Bar of California and am over the age of eighteen.

2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP ("SWCK"). SWCK specializes in class, collective, and Private Attorneys General Act of 2004 ("PAGA") litigation in state and federal court.

3. SWCKW and the Law Offices of Robert S. Boulter represent Plaintiff Thomas Huddleston ("Plaintiff") in this action and the Classes against John Christner Trucking, LLC ("Defendant" or "JCT"). I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class and Collective Action Settlement. I am familiar with the file, the documents, and the history related to these cases. The following statements are based on my personal

knowledge and review of the files. If called to do so, I could and would testify competently thereto.

4. A true and correct copy of the fully-executed Joint Stipulation of Settlement and Release of Class and Collective Action (the “Settlement Agreement” or the “Settlement”) is attached hereto as **Exhibit A**. The Notice of Settlement (“Notice”) is attached to the Settlement as **Exhibit 2**.

QUALIFICATIONS, EXPERIENCE, AND EXPERTISE

5. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour class actions and employment class actions. In November 2012, the Recorder listed the firm as one of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and attorneys have litigated major wage and hour class actions, have won several prestigious awards, and sit on important boards and committees in the legal community. SWCK was founded by Todd Schneider in 1993, and I have been a member of the firm since 1995.

6. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases which have been certified and/or settled as class actions includes: *Hazel v. Himage Solutions, Inc.* (Case No. RG20068159) (Alameda County Superior Court, November 2, 2021) (final approval of a California Rule 23 class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements); *Pine Manor Investors, LLC v. FPI Management, Inc.* (Case No. 34-2018-00237315) (Sacramento County Superior Court, October 20, 2021) (final approval of a California Rule 23 class action settlement in action that alleged improper billing for workers compensation charges by an apartment complex management company); *Etcheverry v. Franciscan Health System, et al.* (Case No. 3:19-cv-05261-RJB-MAT) (Western District of

Washington, October 19, 2021) (final approval of hybrid Fair Labor Standards Act and Washington class action); *Jean-Pierre, et al. v. J&L Cable TV Services, Inc.* (Case No. 1:18-cv-11499-MLW) (District of Massachusetts, August 31, 2021) (final approval of hybrid Fair Labor Standards Act and Massachusetts, New Hampshire, Maine, and Pennsylvania class action); *Amaraut, et al. v. Sprint/United Management Co.* (Case No. 19-cv-411-WQH-AHG) (Southern District of California, August 5, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Diaz, et al. v. TAK Communications CA, Inc., et al.* (Case No. RG20064706) (Alameda Superior Court, July 27, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Villafan v. Broadpectrum Downstream Services, Inc., et al.* (Case No. 3:18-cv-06741-LB) (Northern District of California, April 8, 2021) (final approval of hybrid Fair Labor Standards Act and California law class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *Jones, et al. v. CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern District of California, June 1, 2020) (final approval of hybrid Fair Labor Standards Act and California, Washington, Illinois, Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements, under California law); *Soto, et al. v. O.C. Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action

with joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Van Liew v. North Star Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to California record keeping requirements, waiting time penalties, and failure to provide itemized wage statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due, failure to adhere to California record keeping requirements, and failure to provide adequate seating, under California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages, waiting time penalties, failure to provide itemized wage statements, and failure to pay undiscounted wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Chen, J.) (Northern District of

California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District of California) (final approval of class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clocker work, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV

1100505) (Marin County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements to retention specialists working for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a class of individuals with mobility disabilities denied access to various facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final

approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to and for off-the-clock work by certified emergency medical technicians); *Espinosa, et al. v. National Beef, et al.* (Case No. ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San Francisco Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work by, employees at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of class action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of California) (final approval of class action settlement for off-the-clock work by production-line employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County Superior Court) (final approval of class action settlement for missed meal and

rest periods on behalf of hourly workers at Six Flags amusement parks); *Jimenez v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County Superior Court) (final approval of class action settlement for misclassification of hospital clerical workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224) (Los Angeles County Superior Court) (final approval of class action settlement for failure to pay overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (certified class action on behalf of flight nurses); *National Federation of the Blind v. Target* (Case No. C 06-01802 MHP) (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the United States who have tried to access Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination within FedEx); *Siddiqi v. Regents of the University of California* (Case No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf plaintiffs alleging disability access violations at the University of California); *Lopez v. San Francisco Unified School District* (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in favor of plaintiffs in class action against school district for widespread disability access violations); *Campos v. San Francisco State University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class action in favor of disabled plaintiffs for widespread disability access violations); *Singleton v. Regents of the University of California* (Case No. 807233-1) (Alameda County Superior Court) (class settlement for women alleging gender discrimination at Lawrence Livermore National Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County Superior Court) (final approval of class action settlement for drive-time required of Coca-Cola account managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County Superior Court) (California statewide wage and hour "misclassification" class action resulting in a class-wide \$3.25 million settlement);

Taormina v. Siebel Systems, Inc. (Case No. RG05219031) (Alameda County Superior Court) (final approval of class action settlement for misclassification of Siebel’s inside sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County Superior Court) (final approval of class action settlement for failure to provide meal and rest periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final approval of class action settlement for failure to pay accrued vacation pay upon end of employment); *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County Superior Court) and *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB)) (final approval of class action settlement for failure to pay Sears drivers for all hours worked); among many others.

7. Nearly my entire legal career has been devoted to advocating for the rights of individuals who have been subjected to illegal pay policies, discrimination, harassment and retaliation and representing employees in wage and hour and discrimination class actions. I have litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I manage many of the firm’s current cases in these areas. I am a member of the State Bar of California, and have had memberships with Public Justice, the National Employment Lawyers Association, the California Employment Lawyers Association, and the Consumer Attorneys of California. I served on the Board of Directors for the San Francisco Trial Lawyers Association and co-chaired its Women’s Caucus. I was named one of the “Top Women Litigators for 2010” by the Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned my Bachelor’s degree from the University of California, and I am a graduate of the University of the Pacific, McGeorge School of Law.

CASE SUMMARY AND PROCEDURAL HISTORY

8. On April 13, 2017, Plaintiff filed a federal class and collective action against JCT in the Northern District of California—substantively identical to the one currently before this Court. *See Thomas Huddleston v. John Christner Trucking, LLC, Case No. 3:17-cv-02081-RS* (Northern District of California, filed on April 13, 2017).

9. Plaintiff brought this class and collective action under the FLSA, California wage and hour laws, as well as the Oklahoma Consumer Protection Act, 15 Okla. Stat. §§ 751 *et seq.* (“OCPA”). ECF 1. Plaintiff alleges that because JCT misclassified its Drivers as independent contractors, JCT failed to comply with numerous provisions of the California Labor Code and California Wage Orders. Plaintiff also alleged that JCT violated the OCPA through numerous misrepresentations and omissions of material fact, including: that Drivers will be treated as independent contractors, the income Drivers would earn, the miles Drivers would receive, and the nature of the economic opportunity JCT was offering to Drivers.

10. JCT has at all times denied, and continue to deny, all of these allegations, including any liability for alleged failure to pay overtime compensation or any alleged wage payment, wage and hour or similar violation, and that Plaintiff’s allegations are appropriate for class/collective and/or representative treatment for any purpose other than for settlement purposes only.

11. Following a contested motion on improper venue, on July 6, 2017, the Northern District of California dismissed the action without prejudice for improper venue. *See id.* at ECF 31. On July 12, 2017, Plaintiff filed this action in the Eastern District of California. *See Thomas Huddleston v. John Christner Trucking, LLC, Case No. 1:17-cv-00532-LJO-SAB* (filed on July 12, 2017). Following a contested motion to transfer, the case was subsequently transferred to this Court on September 28, 2017. *See* ECF 16.

Pre-Certification Discovery and Motion Practice

12. Plaintiff conducted significant pre-certification discovery. The Parties met and conferred extensively regarding the scope of Plaintiff's requests and appeared before this Court for multiple hearings on the Parties' respective discovery motions.

13. In total, Plaintiff propounded 78 requests for production of documents (191 total including merits-based requests), 21 special interrogatories (25 total including merits-based requests), 27 requests for admission, and two third-party subpoenas to various tracking agencies. JCT propounded numerous sets of written discovery, as well, including: 22 (44 total including merits-based requests) special interrogatories, 44 requests for production of documents (47 total including merits-based requests), 5 requests for admission (which were merits-based requests), and provided supplemental responses to both. Plaintiff responded to many of these written requests.¹ JCT produced a total of approximately 28,607 pages of documents and data, which included myriad policies and procedures, independent contractor agreements, lease agreements, personnel files, time and pay data, marketing information and advertisements, training and orientation documents, and delivery and shipment information.

14. Plaintiff also took the depositions of multiple JCT corporate witnesses: Shannon Crowley (a two-day deposition of JCT's Rule 30(b)(6) witness), Sheila Bane, Trish Boone, Darryl Christner, Lori Loy, Cheryl Owens, Quek Song, and Andrea Woodruff. Plaintiff further defended the depositions of multiple JCT drivers: Plaintiff Thomas Huddleston, Jimmy Clark, Anthony Conners, James Tieglund, and Noel Zaragoza. Through the meet and confer process, the parties

¹ Plaintiff's and JCT's respective discovery requests post-class certification to the merits were ultimately stayed pending the appeal. See ECF 251, 254.

also stipulated on April 15, 2019, to the authenticity and uniformity of the Lease Agreement and of the Independent Contractor Operator Agreement provided to all Drivers.

15. The parties engaged in substantial motion practice relating to discovery and case management issues. Plaintiff filed multiple motions including: a motion to quash depositions of opt-in plaintiffs prior to conditional FLSA certification, which was granted, ECF 60, 65; a motion to extend time to continue class certification deadlines to conduct further discovery regarding new information and documents, which was later granted, ECF 110, 118; a motion to compel corporate witness depositions, which was later withdrawn, *see* ECF 95, 102; a motion to compel the deposition of JCT's Chief Financial Officer, Darryl Christner, which was later granted, *see* ECF 127, 130, 133; another motion to extend time to continue class certification, which was later withdrawn, *see* ECF 153, 160; a motion for protective order and accompanying motion for expedited hearing on the motion for protective order to preclude JCT from deposing opt-in plaintiffs and class members following the close of class discovery, which were denied and granted respectively, *see* ECF 178, 179, 185, 189.

16. On April 19, 2019, almost immediately preceding Plaintiff's deadline to file his motion for class certification, JCT filed a motion to "determine applicable law," which would have fundamentally altered the claims at issue and certification analysis. *See* ECF 158-159. JCT requested the Court to "clarify" that Oklahoma wage and hour law, and not California wage and hour law, applied to the claims of the California Class. *Id.* This would have effectively dismissed the California Class's claims at the same time a motion to certify those claims would be pending. Plaintiff filed a motion to strike JCT's motion and a motion to accelerate hearing on Plaintiff's motion to strike, which was granted in part. ECF 176-177, 180. Following full briefing, the Court granted Plaintiff's motion to strike and JCT's motion was stricken without prejudice. ECF 196.

17. After years of discovery and motion practice, the Parties litigated a contested motion for class certification. On April 22, 2019, Plaintiff sought to certify a California Class, comprised of all Drivers who (1) performed transportation services for JCT in the State of California; (2) entered into an ICOA with JCT; (3) entered into a Lease Agreement with JCT; and (4) were classified as independent contractors. *See* ECF 162. Plaintiff proposed the California Class would assert claims under the California Labor Code and Wage Orders for work performed exclusively within California’s borders. Plaintiff also sought to certify, under Section 753 of the OCPA, an Oklahoma Class, comprised of all Drivers who (1) provided transportation services for JCT; (2) entered into an ICOA with JCT; and (3) entered into a Lease Agreement with JCT. These claims were based on allegations concerning JCT’s national advertising campaign, as well as JCT’s misrepresentations and omissions at orientation. *Id.* JCT opposed the motion in its entirety.

18. On January 30, 2020, the Court issued an order granting in part Plaintiff’s Motion for Class Certification. *See* ECF 213 (“Certification Order”). The Court certified the California Class² on Counts 2-7 and 10-11 of the Complaint (for violations of California wage and hour laws) in its entirety, and further held that California misclassification law applied to determine whether class members were employees or independent contractors. *See* ECF 213. The Court further certified an Oklahoma Class³ on Count 13 of the Complaint (for violations of the OCPA),

² “All current and former individuals, to the extent they performed transportation services for John Christner Trucking, LLC within California, who (1) entered into an Independent Contractor Operator Agreement with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, LLC, and (3) were classified as independent contractors.” ECF 213 at p. 38.

³ “All current and former individuals who provide transportation services for John Christner Trucking, LLC within the United States, who (1) entered into an Independent Contractor Operator Agreement with JCT, and (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, LLC.” ECF 213 at p. 38.

to the extent it was based on misrepresentations and omissions that can be traced to orientation, but not on JCT's national advertising campaign. *See ibid.*

19. JCT sought reconsideration of the Court's Certification Order regarding the Court's certification of both classes, which the Court granted in part. *See* ECF 222-223, 233. Specifically, the Court, substituted Oklahoma misclassification law for California's, leaving the California Class's claims under California statutory wage and hour laws certified. *See* ECF 233 ("Reconsideration Order"). The Court further denied JCT's motion to reconsider the Oklahoma Class. *Ibid.*

20. JCT filed a Rule 23(f) petition, seeking review in the Tenth Circuit Court of Appeals of both the Certification Order and the Reconsideration Order. Plaintiff opposed the Petition, and further sought a conditional cross-appeal the Reconsideration Order, in the event the Tenth Circuit granted JCT's petition. On February 26, 2021, the Tenth Circuit granted JCT's Rule 23(f) Petition as well as Plaintiff's cross-petition (ECF No. 246).

21. On November 12, 2021, JCT filed the first brief on appeal. On December 13, 2021, Plaintiff filed the second brief on appeal and cross-appeal. JCT's and Plaintiff's deadlines to file the third and fourth briefs, respectively, on appeal and cross-appeal were subsequently vacated in light of the Parties' Settlement.

Settlement Conference and Subsequent Settlement

22. Following the Tenth Circuit's Court order granting JCT's petition and Plaintiff's cross-petition to appeal, Counsel for the Parties met and conferred on multiple occasions with Chief Circuit Mediator David Aemmer (Aemmer) to discuss the possibility of mediating the case prior to proceeding with the pending appeal and cross-appeal. On April 7, 2021, the Parties participated in a Mediation Conference with Aemmer.

23. On September 8, 2021, the Parties remotely attended a full-day settlement conference with Aemmer but the case was not resolved. *Id.* Following further numerous, intensive negotiations at arms' length under the guidance of Aemmer, the Parties agreed in principle to settle this matter, culminating in a memorandum of understanding that was executed on February 25, 2022.

24. Over the next few months, the Parties further negotiated at length the terms of the settlement at arms' length and with the assistance of Aemmer. Ultimately, a long-form settlement agreement was fully executed on May 12, 2022.

25. On May 18, 2022, the Ninth Circuit court granted the Parties' joint motion for limited remand and abatement of the appeals in light of the Parties' pending settlement.

THE SETTLEMENT

Basic Terms of the Settlement

26. Under the Settlement, JCT will pay a non-reversionary Gross Settlement Amount of \$9,250,000 to resolve this litigation. Settlement, ¶¶ I.20, III.1. This amount includes all payments to the Class Members; proposed attorneys' fees and costs; proposed service award; the costs of settlement administration; and the PAGA payment (the payment to the California Labor and Workforce Development Agency ["LWDA"] under the California Private Attorneys General Act ["PAGA"]). *See id.*, ¶ III.1. The entire Gross Settlement Amount will be disbursed pursuant to the terms of the Settlement, and none of it will revert to JCT. *Id.*, ¶ I.20.

27. The Net Settlement Amount is the Gross Settlement Amount less costs of settlement administration, proposed attorneys' fees and costs, proposed service award, and the PAGA payment. This Net Settlement Amount will be distributed to Class Participants, and is currently calculated to be approximately \$5,812,475. This estimate excludes the \$25,000

allocated in PAGA penalties (part of the \$100,000 PAGA Payment) which are allocated for distribution to Class Participants.

28. Approximately 5,647 Class Members (i.e., members of the California Class, Oklahoma Class, and FLSA Collective Members) are eligible to receive a portion of the Net Settlement Amount. The various Classes are defined as follows:

- a. California Class: A portion of the Net Settlement Amount will be distributed to California Class Members, who are defined as “[a]ll current and former individuals, to the extent they performed transportation services for John Christner Trucking, LLC (JCT) within California from April 12, 2013 to the date the Court grants preliminary approval of the settlement (Preliminary Approval Date), who (1) entered into an Independent Contractor Operating Agreement (ICOA) with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, LLC, and (3) were classified as independent contractors” between April 12, 2013, through the Preliminary Approval Date. Settlement, ¶¶ I.5, I.10.
- b. Oklahoma Class: A portion of the Net Settlement Amount will be distributed to Oklahoma Class Members, who are defined as “[a]ll current and former individuals who provide(d) transportation services for JCT within the United States, who (1) entered into an ICOA with JCT, and (2) entered into a Lease Agreement with JCT or Three Diamond Leasing, from April 12, 2014 to the Preliminary Approval Date.” Settlement, ¶ I.5.
- c. FLSA Collective Members: A portion of the Net Settlement Amount will be distributed to 518 individuals who validly submitted written consents to join this Action under 29 U.S.C. § 216(b). Settlement, ¶ I.5, Ex. 1. These individuals

are defined as “[a]ll current and former individuals who provided transportation services for JCT within the United States, between May 1, 2015 and the Preliminary Approval Date, who (1) entered into an ICOA with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, (3) were classified as independent contractors, and (4) validly opted in to the FLSA collective on or before February 14, 2020 (FLSA Collective Members).” *Id.*, ¶ I.5.

29. Class Participants will release claims under federal law, state law, including California law or Oklahoma law, or local law, limited to those that were or could have been asserted, whether known or unknown, or arising out of or connected to facts, theories, and claims pled in the Complaint, that Class Participants hold or have held before the Effective Date (“Released Claims”). *Id.*, ¶ I.33. In addition to the Released Claims, Plaintiff and the FLSA Collective Members will also release any and all claims, known or unknown, under the FLSA, that were pled or could have been pled based on the factual allegations of the Complaint. *Id.*, ¶ I.33. Upon the Effective Date, all Class Participants will also waive their rights and benefits as to only the Released Claims based on or arising out of the same factual predicates of the Complaint, through the Preliminary Approval Date, Cal. Civ. Code. § 1542. *Id.*, ¶ X.1.

30. The Settlement provides that Plaintiff will seek a service payment to Class and Collective representative, Named Plaintiff Thomas Huddleston, of \$25,000 (subject to Court approval) to compensate him for his time and effort in service of the Classes, as well as in exchange for a general release. *Id.*, ¶¶ I.35, III.2, X.2. The proposed service award in the amount of \$25,000 for Mr. Huddleston represents 0.27% of the Gross Settlement Amount.

31. The Released Claims will apply to the Released Parties, including Defendant and its present and former parent companies, subsidiaries, divisions, affiliates, successors,

predecessors, related companies, and 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. *Id.*, ¶ I.34.

32. Class Counsel’s attorneys’ fees and litigation expenses are included in the Gross Settlement Amount. Settlement, ¶ IV.1. The Settlement provides that JCT does not oppose a fee application of up 33.33% of the Gross Settlement Amount (i.e., \$3,083,025), plus reasonable out-of-pocket costs of up to \$150,000. *See id.*

33. There will be a direct monetary distribution to the California Labor and Workforce Development Agency (“LWDA”) and California Class Members under the PAGA. Settlement, ¶¶ VII.2.d. Pursuant to the PAGA, of the \$100,000 total PAGA Payment, \$75,000 (75% of the \$100,000 allocation) will be paid to the LWDA, the remaining \$25,000 (25% of the \$100,000 allocation) will be distributed *pro rata* to California Class Members. *See id.*

34. The Parties have agreed to use Settlement Services, Inc. (“SSI”) to administer the Settlement, for total fees and costs currently estimated at \$68,900, and not to exceed \$79,500, which is to be paid out of the Gross Settlement Amount. Under the Settlement, SSI is to undertake its best efforts to ensure that the settlement checks and notice are provided to the current addresses of Class Members, to provide weekly updates, to perform tax reporting, to create and maintain a settlement website, to create and maintain a toll-free telephone number to field inquiries, process opt-out requests, to calculate and distribute settlement payments, and to be available to respond to administrative queries. *Id.*, ¶¶ I.37, III.2, III.4, V.1-2, VI.1.

35. The Settlement Administrator will send a Notice to all Class Members via U.S. mail. *Id.*, ¶¶ I.8, VI.2, Ex. 2 (Notice of Settlement). The Settlement Administrator will re-mail undeliverable mailings to those with a forwarding address, and further conduct skip-tracing or

other computer searches to ensure an updated address is found for any further re-mailings. *Id.*, ¶ VI.2.

Allocations and Awards

36. Class Members do not have to submit claims to receive a settlement payment. *Id.*, ¶ VI.3. Each Class Member will have 60 days from the mailing of the Notice of Settlement to request for exclusion (opt-out) or object to the Settlement. *Id.*, ¶¶ VI.3-4.

37. Each Class Participant (Class Members who do not validly opt-out of the Settlement) will receive a *pro rata* portion of the Net Settlement Amount based on based on the number of settlement shares they are assigned compared to the total number of workweeks all Class Participants worked. *Id.*, ¶¶ VII.2-3. FLSA Collective Members will receive 1 settlement share per workweek (FLSA Workweeks). *Id.*, ¶ VIII.2.b. To reflect the applicable value of state law claims, Class Participants will receive: 2 settlement shares per workweek for workweeks during which he or she performed any work in California (California Workweeks); and 2 settlement shares per workweek for workweeks during which he or she performed work in the United States (Oklahoma Workweeks). *Id.* 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. *Id.*, ¶ VII.3.c. 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. *Id.*

38. The Notices of Settlement will provide the estimated Settlement Award and number of workweeks for each Class Member, assuming full participation in the settlement. Settlement Award and eligibility determinations will be based on workweek information that JCT will provide to the Settlement Administrator.

39. Settlement Awards will be paid to Class Participants by the Settlement Administrator within 35 days after the occurrence of the “Effective Date.” Settlement Award checks will remain valid for 180 days from the date of their issuance.

40. Any funds still remaining after the 180-day check cashing period will be redistributed to Class Participants on a prorated basis, and any additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed funds prior to redistribution. *Id.*, ¶ VII.9. Following an additional 180-day check cashing period for the redistributed checks, any remaining funds will revert to Legal Services Corporation, the Parties’ agreed-upon *cy pres* beneficiary. *Id.*

41. Legal Services Corporation bears a substantial nexus to the interests of the Class Members because it is a grant-making organization that provides financial support for civil legal aid to low-income Americans. Plaintiff and Class Counsel do not have any financial, business, or personal relationships with Legal Services Corporation, to the best of my knowledge.

THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

42. The Gross Settlement Amount is a negotiated amount that resulted from substantial arm’s-length, non-collusive negotiations and significant investigation and analysis by Class Counsel. Class Counsel and JCT’s counsel – law firms with great experience in complex class litigation, particularly in truck driver misclassification cases – have agreed to settle this action, only after class certification, significant appellate briefing, and months of negotiation under the guidance of a Circuit Court mediator.

43. During the pendency of JCT’s appeal and Plaintiff’s cross-appeal, the Parties began settlement discussions and negotiations, which were conducted at arm’s length and with the assistance of a highly experienced Circuit Court mediator. The negotiation process was hard-fought and protracted over months, including several settlement conferences with the Circuit

Court mediator and numerous drafts. Plaintiff submitted comprehensive mediation statements and preliminary damages studies, which were thoroughly prepared by Class Counsel and based on years of discovery, documents, data, research, and dozens of interviews.

44. The Parties engaged in extensive formal and informal discovery, including multiple depositions, and dozens of class interviews that have enabled Class Counsel to assess the claims and potential defenses in this action. Class Counsel was able to accurately assess the legal and factual issues that would arise if the cases proceeded to trial(s). In addition, in reaching this Settlement, Class Counsel relied on their substantial litigation experience in similar wage and hour class and collective actions. Class Counsel's liability and damages evaluation was premised on a careful and extensive analysis of tens of thousands of pages of documents, and on the effects of tens JCT's independent contractor operator agreements, lease agreements, and other policies and practices. Ultimately, facilitated by Circuit Court Mediator Aemmer, the Plaintiff used this information and discovery to fairly resolve the litigation.

45. Class Counsel believes that the settlement amount is fair and reasonable in light of their extensive investigation, motion practice, the risks of continued litigation, and their overall experience.

46. Based on Class Counsel's estimates, the Gross Settlement Amount of \$9,250,000 represents a significant portion of the total calculated exposure scenario at trial. Class Counsel determined a realistic calculated exposure is approximately \$84,632,862. Specifically, Class Counsel calculated the wage and hour claims are represented by approximately \$49,292,439 of the calculated exposure, and the Oklahoma economic opportunity claims are represented by approximately \$35,340,423 of the calculated exposure. Put another way, the Gross Settlement Amount represents approximately 10.93% of the calculated exposure at trial.

47. To have obtained such a result at trial, Plaintiff would have to prove not only that Class Members were misclassified following a successful cross-appeal, Plaintiff would have had to prove that Oklahoma Class Members are owed the net amount of how much JCT represented they could make, less how much they in fact made, as well as prove that the overall driving opportunity presented to them by JCT was unfair and deceptive. Plaintiff would have had to further prove that California Class Members suffered an average of at least 2 California Labor Code violations each pay period, and that their business expenses occurred during the class period, in the State of California.⁴

48. Class Counsel further recognizes there are myriad methods to compute damages for the Oklahoma claims. All of these would have been the subject of substantial and costly economic expert discovery. It is far from certain that the economic measure of damages for this claim that ultimately went to a jury – assuming the case remained certified – would have reflected Plaintiff’s “best case scenario.”

⁴ There is also a significant chance that the Court would limit PAGA penalties by declining to stack penalties (i.e., assess multiple penalties for derivative violations for a particular pay period for a particular employee), or simply exercise its discretion to reduce them altogether. *Smith v. Lux Retail N. Am., Inc.*, No. C 13-01579 WHA, 2013 U.S. Dist. LEXIS 83562, at *9 (N.D. Cal. June 13, 2013) (“For the single mistake of failing to include commissions in the overtime base, plaintiff has asserted five (count them, five) separate labor code violations that could lead to statutory penalties. One is a penalty for failure to pay overtime at the appropriate rate (§§ 510, 558). Another is for denying employees minimum wage and overtime (§ 1194). But is it plausible that we would really pile one penalty on another for a single substantive wrong?”). On the derivative claims, there are substantial questions as to whether individuals who sporadically worked in California could recover them, and even then, JCT would have argued that no penalties for waiting-time violations can be awarded unless the failure to pay wages is “willful.” *See* Cal. Lab. Code § 203; 8 C.C.R. 13520 (“[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due.”); *Smith v. Rae Venter Law Group*, 29 Cal. 4th 345, 354 n.2 (2002) (holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties).

49. These figures would of course be disputed and hotly contested. The result is well within the reasonable standard when considering the difficulty and risks presented by pursuing further litigation. The final settlement amount takes into account the substantial risks inherent in any class action wage-and hour case, as well as the procedural posture of the case and the specific defenses asserted by JCT, many of which are unique to this case.

50. In an effort to ensure fairness, the Parties have agreed to allocate the settlement proceeds amongst Class Members in a manner that recognizes that amount of time that the particular Driver worked for JCT in the applicable limitations period. The allocation method, which is based on the number of workweeks, will ensure that longer-tenured Drivers receive a greater recovery. Moreover, the allocation tracks the differences in substantive law and penalty claims by weighting the workweek shares more heavily for work performed in California and for Oklahoma Class Members who were subject to Oklahoma laws. The allocation was made based on Class Counsel's assessment to ensure that employees are compensated accordingly and in the most equitable manner.

51. The monetary value of the proposed Settlement represents a fair compromise given the risks and uncertainties posed by continued litigation. If this action were to continue through appeals, go to trial(s) (which JCT would vigorously oppose if this Settlement Agreement were not approved), Class Counsel estimates that fees and costs would exceed \$6,000,000.00. Litigating the class and collective action claims would require substantial additional preparation and discovery. It would require depositions of experts, the presentation of percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation of voluminous documentary evidence and the preparation and analysis of expert reports.

52. In contrast to litigating this suit, resolving this case by means of the Settlement will yield a prompt, certain, and very substantial recovery for the Class Members. Such a result will

benefit the Parties and the court system.

53. Numerous, serious questions of law and fact exist in this action, all of which are the subject of considerable risk if this case were to continue to be litigated. While Plaintiff successfully obtained certification of the California Class, that order was modified to substitute Oklahoma misclassification law for that of California. While Plaintiff and Class Counsel have remained confident they would have successfully prosecuted this case even under Oklahoma misclassification law, as Defendant pointed out in its appellate briefing, plaintiffs rarely succeed in prosecuting misclassification claims under Oklahoma standards. If Plaintiff could not show uniform misclassification under Oklahoma law, every wage and hour claim at issue in this case would fail in unison.

54. Of course, this risk assumes the Tenth Circuit would have fully affirmed this Court's certification orders. The risk of the Tenth Circuit vacating this Court's Certification Order was, of course, very real. While Plaintiff and Class Counsel remain confident their efforts to maintain the certification decision would prevail, it cannot be ignored that the granting of a Rule 23(f) petition is entirely discretionary, and Circuit Courts often grant them when they have concerns over a District Court's certification decision. Misclassification class actions are notoriously difficult to certify, and there was a very real risk the Tenth Circuit would reverse this Court's Certification Order.

55. But even assuming Plaintiff successfully defended this Court's certification decision, Plaintiff would still have to prove these claims. This includes not only the threshold misclassification inquiry, but the labor code claims themselves. After all, misclassification, alone, does not expose JCT to damages. Plaintiff still would have had to prove off-the-clock work was taking place, and done so on a uniform basis. If Plaintiff were to fail in that regard, the risk of decertification on the eve of trial is always a possibility in cases such as these.

56. And then there are the risks regarding the Oklahoma claims. The Court's certification decision was based on an inference of reliance theory. Plaintiff and Class Counsel believe this decision was correct, and remains confident in his ability to defend this decision on appeal. Nevertheless, if the Tenth Circuit denied an inference of reliance, there is a significant change the Oklahoma Class would have been decertified. And even if the Court's certification decision was upheld, Plaintiff still would have had to prove – from the representations and omissions taking place only at orientation – that this limited pool of evidence was sufficient to demonstrate liability.

57. This Settlement represents not only a meaningful, immediate recovery for the Classes, but also one without any risk or additional expenses of further litigation. This benefit should be considered to the risk that the Classes may recover nothing after the current cross appeals, contested trial, and most likely, further appeals, possibly years into the future, or that litigation would deplete funds available to satisfy a judgment in the future.

58. This Settlement provides significant compensation to the Classes, and the Settlement provides an excellent recovery in the face of expanding and uncertain litigation. In light of all of the risks, the settlement amount is fair, reasonable, and adequate.

59. Plaintiff and the Classes are represented by experienced and respected litigators of representative wage and hour actions. Given the risks, delays, and uncertainty inherent in continued litigation, I believe that the Settlement is fair and reasonable to avoid the cost and uncertainty of continuing litigation and I feel strongly that the proposed Settlement achieves an excellent result for the Class Members.

SERVICE AWARD

60. The enhancement payment of up to \$25,000 for Plaintiff Huddleston is intended to compensate Plaintiff for a broader release and for the critical role he played in this case, and the

time, effort, and risks he undertook in helping secure the result obtained on behalf of the Class members.

61. In agreeing to serve as Class and Collective representative, Plaintiff formally agreed to accept the responsibilities of representing the interests of all Class Members.

62. JCT indicated it does not oppose the requested payments to the Plaintiff as a reasonable service award.

ATTORNEYS' FEES AND COSTS

63. In their fee motion to be submitted with their final approval papers, Class Counsel will request up to one-third of the Gross Settlement Amount, or \$3,083,025, plus reimbursement of costs up \$150,000. Class Counsel will provide their updated lodestar information with their fee motion, which will demonstrate the reasonableness of Class Counsel's rates.

64. Class Counsel's current cumulative lodestar likely exceeds their requested fee award, and is not inclusive of all of the work that Class Counsel will continue to perform in bringing this settlement to a close. As of June 8, 2022, SWCK's lodestar alone is currently estimated to be \$2,870,000, and Class Counsel's cumulative lodestar will continue to rise well above the requested fee award. Class Counsel will provide their lodestar information with their fee motion, which will demonstrate the reasonableness of Class Counsel's rates. On this basis, the requested attorneys' fees award is eminently reasonable.

65. In this case, given the excellent results achieved, the effort expended litigating the Action, including the difficulties attendant to litigating this case, such an upward adjustment is warranted. There was no guarantee of compensation or reimbursement. Rather, counsel undertook all the risks of this litigation on a completely contingent fee basis. These risks were front and center. Defendant's vigorous and skillful defense further confronted Class Counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in the

case. Nevertheless, Plaintiff and Class Counsel committed themselves to developing and pressing Plaintiff's legal claims to enforce the employees' rights and maximize the class and collective recovery. During the litigation, counsel had to turn away other less risky cases to remain sufficiently resourced for this one.

66. Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects that his or her compensation will be significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims will be better able to obtain qualified counsel.

67. For these reasons, Class Counsel respectfully submits that a one-third recovery for fees is modest and appropriate. The lodestar amount will increase with preparation of the final approval papers, preparation and attendance at remaining hearings, correspondence and communications with Class Members, and settlement administration and oversight.

68. Class Counsel also requests reimbursement for their litigation costs.

69. Class Counsel's efforts resulted in an excellent settlement, and the requested fee award will likely be exceeded by Class Counsel's lodestar. The fee and costs award should be preliminarily approved as fair and reasonable.

THE NOTICE OF SETTLEMENT AND RELATED ADMINISTRATION

70. The Notice of Settlement, attached as **Exhibit 2** to the Settlement Agreement, and manner of distribution negotiated and agreed upon by the Parties are “the best notice practicable.”

71. All Class Members have been identified and the Notice of Settlement will be mailed directly to each Class Member. In addition, the Parties will provide a settlement website that provides a generic form of the Notice, the Settlement Agreement, and other case related documents and contact information.

72. The proposed Notice fulfills the requirement of neutrality in class notices. It summarizes the proceedings necessary to provide context for the Settlement Agreement and summarizes the terms and conditions of the Settlement, including an explanation of how the settlement amount will be allocated between the named Plaintiff, Class Counsel, the Settlement Administrator, and the Class Members, in an informative, coherent and easy-to-understand manner, all in compliance with the Manual for Complex Litigation’s recommendation that “the notice contain a clear, accurate description of the terms of the settlement.”

73. The Notice clearly explains the procedures and deadlines for requesting exclusion from the Settlement, objecting to the Settlement, the consequences of taking or foregoing the various options available to Class members, and the date, time and place of the Final Approval Hearing. The Notice clarifies that the failure to submit a written objection may be excused upon a showing of good cause. Pursuant to Rule 23(h), the proposed Class Notice also sets forth the amount of attorneys’ fees and costs sought by Plaintiff, as well as an explanation of the procedure by which Class Counsel will apply for them. The Class Notice clearly states that the settlement does not constitute an admission of liability by JCT. It makes clear that the final settlement approval decision has yet to be made.

74. Furthermore, reasonable steps will be taken to ensure that all Class Members

receive the Notice. Before mailing, JCT will provide to the Settlement Administrator a database that contains the names, last known addresses, and social security numbers of each Class Member, along with the applicable number(s) of Workweeks for calculating the respective settlement shares. The Notices of Settlement will be sent by United States Mail. The Settlement Administrator will make reasonable efforts to update the contact information in the database using public and private skip tracing methods. Within 7 days of receipt of the Class List from JCT, the Settlement Administrator will mail the Notices of Settlement to each Class Member.

75. With respect to Notices returned as undeliverable, the Settlement Administrator will re-mail any Notices returned to the Settlement Administrator with a forwarding address within three business days following receipt of the returned mail. If any Notice is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator will undertake reasonable efforts to search for the correct address, and will promptly re-mail the Settlement Notice to any newly found address.

76. Rule 23 Class Members will have 60 days from the mailing of the Notices of Settlement to opt-out or object to the Settlement. Any Rule 23 Class Member who does not submit a timely request to exclude themselves from the Settlement will be deemed a Class Participant whose rights and claims are determined by any order the Court enters granting final approval, and any judgment the Court ultimately enters in the case.

77. Administration of the Settlement will follow upon the Court's issuance of final approval of the Settlement. The Settlement Administrator will provide Class Counsel and JCT's Counsel with a report of all Settlement payments at least 7 days prior to the Court's Final Approval and Fairness Hearing. Because the proposed Notice of Settlement clearly and concisely describe the terms of the Settlement and the awards and obligations for Class Members who participate, and because the Notice will be disseminated in a way calculated to provide notice to

as many Class Members as possible, the Notice of Settlement should be preliminarily approved.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and is based on my own personal knowledge.

Executed this 17th day of June, 2022, in San Rafael, California.

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THOMAS HUDDLESTON, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

JOHN CHRISTNER TRUCKING, LLC,

Defendant.

Case No. 17-cv-00549-GKF-FHM

**ORDER GRANTING PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

Having considered Plaintiff Thomas Huddleston’s Unopposed Motion For Preliminary Approval of Class and Collective Action Settlement [ECF 269] requesting preliminary approval of Joint Stipulation of Settlement and Release of Class and Collective Action (the “Settlement”), and having reviewed the papers and documents presented, the statements of counsel, and the entire record in this case, the Court finds that the relief requested in the Motion should be granted.

IT IS THEREFORE ORDERED that Plaintiff’s Unopposed Motion For Preliminary Approval of Class and Collective Action Settlement be granted as follows:

1. This Order incorporates by reference the definitions in the Settlement, and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement.

2. The Court hereby GRANTS preliminary approval of the terms and conditions contained in the Settlement, attached to the Declaration of Carolyn H. Cottrell in support of Plaintiffs’ Motion for Preliminary Approval of Class and Collective Settlement as Exhibit A, as to the Classes. The Court preliminarily finds that the terms of the Settlement appear to be within the range of possible approval, pursuant to Federal Rule of Civil Procedure 23 and applicable law.

3. The Court finds on a preliminary basis that the settlement amount is fair and reasonable to the Class Members. The Court further finds on a preliminary basis that (1) the

Settlement has been reached as the result of intensive, serious, and non-collusive negotiations between the Parties was fairly and honestly negotiated with the guidance of a Circuit Court mediator; (2) significant discovery, investigation, research, and litigation have been conducted such that counsel for the Parties are able to reasonably evaluate their respective positions; (3) the settlement at this time will avoid substantial costs, delay, and risks that would be presented by the further prosecution of the litigation; and (4) when balanced against the probable outcome of further litigation relating to class certification and decertification, liability and damages issues, and potential appeals, the Settlement appears to be within the range of reasonableness that could ultimately be given final approval by this Court.

4. The Court hereby GRANTS conditional certification of the two Classes, in accordance with the Settlement, for the purposes of this Settlement only. The Classes were previously certified nearly identical class definitions for these Classes. *See* ECF 213 at p. 38. The Classes are identified in the Settlement as follows:

- a. California Class: “All current and former individuals, to the extent they performed transportation services for John Christner Trucking, LLC (JCT) within California from April 12, 2013 to the date the Court grants preliminary approval of the settlement (Preliminary Approval Date), who (1) entered into an Independent Contractor Operating Agreement (ICOA) with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, LLC, and (3) were classified as independent contractors” between April 12, 2013, through the Preliminary Approval Date.
- b. Oklahoma Class: All current and former individuals who provide(d) transportation services for JCT within the United States, who (1) entered into an ICOA with JCT, and (2) entered

into a Lease Agreement with JCT or Three Diamond Leasing, from April 12, 2014 to the Preliminary Approval Date.

5. The Court has conditionally certified the FLSA Collective. The FLSA Collective is defined as: “[a]ll current and former individuals who provided transportation services for JCT within the United States, between May 1, 2015 and the Preliminary Approval Date, who (1) entered into an ICOA with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, (3) were classified as independent contractors, and (4) validly opted in to the FLSA collective on or before February 14, 2020.”

6. The Court hereby GRANTS Approval of the terms and conditions contained in the Settlement as to the FLSA Collective Members. The Court finds that the terms of the Settlement are within the range of possible approval, pursuant to the Fair Labor Standards Act and applicable law.

7. The Court finds that the Settlement represents a fair and reasonable compromise and resolves a *bona fide* dispute over whether Class Members were actually misclassified and, as a result, were subject to wage and hour violations committed by JCT. The Court further finds that: (1) the Settlement has been reached as the result of intensive, serious, and non-collusive negotiations between the Parties was fairly and honestly negotiated with the guidance of a Circuit Court mediator; (2) significant discovery, investigation, research, and litigation have been conducted such that counsel for the Parties are able to reasonably evaluate their respective positions; (3) the settlement at this time will avoid substantial costs, delay, and risks that would be presented by the further prosecution of the litigation; and (4) when balanced against the probable outcome of further litigation relating to class certification and decertification, liability and damages issues, and potential appeals, the Settlement appears to be within the range of reasonableness that

could ultimately be given final approval by this Court. The Court further finds that the Settlement furthers the purpose of the FLSA by providing Class Members with substantial recovery for their alleged unpaid wages, that they may have otherwise been unable to recover.

8. The Court hereby authorizes the retention of Settlement Services, Inc. as Settlement Administrator for the purpose of the Settlement.

9. The Court hereby confirms the appointment of Schneider Wallace Cottrell Konecky LLP and Law Offices of Robert S. Boulter as Counsel for the Classes and the FLSA Collective. The Court hereby confirms the appointment Plaintiff Thomas Huddleston as Class and Collective Representative for the Classes and the FLSA Collective.

10. The Court hereby APPROVES the Notice of Settlement attached to the Settlement as Exhibit 2. The Court finds that the Notice of Settlement, along with the related notification procedure contemplated by the Settlement, constitute the best notice practicable under the circumstances and are in full compliance with the applicable laws and the requirements of due process. The Court further finds that the Notice of Settlement appears to fully and accurately inform the Class Members of all material elements of the proposed Settlement, of their right to be excluded from the Settlement, and of their right and opportunity to object to the Settlement. The Court also finds that the Notice of Settlement appears to fully and accurately inform Class Members of all material elements of the proposed Settlement.

11. The Court hereby authorizes dissemination of the Notice of Settlement to Class Members. Subject to the terms of the Settlement, the Notice of Settlement shall be mailed via first-class mail to the most recent known address of each Class Members within the timeframe specified in the Settlement. The Parties are authorized to make non-substantive changes to the proposed Notice of Settlement that are consistent with the terms of the Settlement and this Order.

12. The Court hereby APPROVES the proposed procedure for Class Members to request exclusion from the Settlement, which is to submit a written statement requesting exclusion to the Settlement Administrator during the time period permitted under the Settlement. Any Class Member who submits a written exclusion shall not be a Member of the Class, shall be barred from participating in the Settlement, and shall receive no benefit from the Settlement.

13. The Court further ORDERS that each Member of the California Class shall be given a full opportunity to object to the Rule 23 component of the proposed Settlement and request for attorneys' fees, and to participate at the Final Approval Hearing. Any Class Member seeking to object to the proposed Settlement may file such objection in writing with the Court and shall serve such objection on Class counsel and Defendant's counsel.

14. The Court further PRELIMINARILY APPROVES Plaintiff's counsel's request for attorneys' fees of up to 33.33% of the Gross Settlement Amount, or \$3,083,025, plus their reasonable out-of-pocket costs of up to \$150,000.

15. The Court ORDERS that Class Counsel shall file papers in support of the fairness hearing before the Final Approval Hearing.

16. The Court ORDERS that Plaintiff's counsel shall file a motion for approval of the fee and cost award and of the service award to the Class Representative, with the appropriate declarations and supporting evidence, to be heard at the same time as the motion for final approval of the Settlement.

17. Accordingly, GOOD CAUSE APPEARING, the Court hereby APPROVES the proposed Notice of Settlement and adopts the following dates and deadlines:

Activity	Deadline
Deadline for JCT to provide Settlement Administrator with the Class List	Within 28 days after the Court's preliminary approval of the Settlement

Activity	Deadline
Deadline for Settlement Administrator to mail and email the Notice of Settlement to Class Members	Within 35 days after the Court’s preliminary approval of the Settlement
Deadline for Class Members to postmark requests to opt-out or file objections to the Settlement (“Opt-Out Deadline”)	60 days after the Settlement Administrator mails the Notice of Settlement
Deadline for Settlement Administrator to provide all counsel and the Court with a final report (a) the final pro rata portion of each Class Participant and (b) the final number of Opt-Outs	Within 10 days after the Opt-Out Deadline
Deadline for filing of Final Approval Motion	Within 30 days of the Opt-Out Deadline
Deadline for Settlement Administrator to provide all Parties’ counsel with a statement detailing the Settlement Administration Costs and the notice administration process	At least 7 days prior to the Court’s Final Approval and Fairness Hearing
Final Approval and Fairness Hearing	Within 120 days after the Preliminary Approval Date
Effective Date	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. In this regard, it is

Activity	Deadline
	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 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.
Deadline for JCT to remit the Gross Settlement Amount to the Settlement Administrator	Within 28 days after Effective Date
Deadline for Settlement Administrator to make payments under the Settlement to Class Participants, Plaintiff for the Service Award, Class Counsel for attorneys’ fees and costs, and itself for Administration Costs	Within 35 days of the Effective Date
Deadline for Settlement Administrator to redistribute uncashed check funds to Class Participants	As soon as practicable after the 180-day check-cashing deadline for individual settlement payments after issuance
Deadline for Settlement Administrator to revert uncashed check funds to cy pres recipient	As soon as practicable after the 180-day check-cashing deadline for redistributed checks after issuance

18. The Court further ORDERS that, pending further order of this Court, all proceedings in the Actions, except those contemplated herein and in the Settlement, are stayed, and all deadlines are vacated.

19. If for any reason the Court does not execute and file a Final Approval Order and Judgment, the proposed Settlement subject to this Order and all evidence and proceedings had in connection with the Settlement shall be null and void.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order or adjourn or continue the final approval hearing without further notice to the Classes.

IT IS SO ORDERED this 21st day of June, 2022.


 GREGORY K. FRIZZELL
 UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THOMAS HUDDLESTON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

JOHN CHRISTNER TRUCKING, LLC,

Defendant.

Case No. 4:17-cv-00549-GKF-FHM

**NOTICE OF ERRATA CORRECTION REGARDING DECLARATION OF CAROLYN
H. COTTRELL IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL
OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiff Thomas Huddleston, ("Plaintiff"), hereby respectfully submits this Notice of Errata. On June 17, 2022, Plaintiff filed his Unopposed Motion to Approval of Class and Collective Action Settlement, including the accompanying Declaration of Carolyn H. Cottrell ("Cottrell Declaration") (See ECF No. 269). Exhibit A was inadvertently excluded from the filing of the Cottrell Declaration.

A true and correct copy of Exhibit A is attached hereto as **Exhibit 1**.

Dated: June 21, 2022

Respectfully submitted,

/s/ Carolyn H. Cottrell

Carolyn H. Cottrell (admitted *pro hac vice*)

David C. Leimbach (admitted *pro hac vice*)

Michelle S. Lim (admitted *pro hac vice*)

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

2000 Powell Street, Suite 1400

Emeryville, California 94608

Telephone: (415) 421-7100

Facsimile: (415) 421-7105

ccottrell@schneiderwallace.com

dleimbach@schneiderwallace.com

mlim@schneiderwallace.com

Robert S. Boulter (admitted *pro hac vice*)

LAW OFFICES OF ROBERT S. BOULTER

1101 Fifth Avenue, Suite 235

San Rafael, California 94901

Telephone: (415) 233-7100

Facsimile: (415) 233-7101

rsb@boulter-law.com

Attorneys for Plaintiff, the putative Class
and Collective

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THOMAS HUDDLESTON, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

JOHN CHRISTNER TRUCKING, LLC,

Defendant.

Case No. 4:17-cv-00549-GKF-FHM

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

This Joint Stipulation of Settlement and Release of Class and Collective Action is made and entered into by Plaintiff, Thomas Huddleston, individually and on behalf of others similarly situated, as defined below, on the one hand, and Defendant, John Christner Trucking, LLC, 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 *Thomas Huddleston, individually and on behalf of all others similarly situated, v. John*

Christner Trucking, LLC, Case No. 4:17-cv-00549-GKF-FHM, pending in the U.S. District Court for the Northern 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, including, but not limited to: (1) failure to pay wages and the minimum wage under the Fair Labor Standards Act (FLSA); (2) failure to pay the minimum wage under California law; (3) failure to pay wages for all hours worked under California law; (4) failure to authorize and permit and/or make available meal and rest periods as required by California law; (5) failure to reimburse for necessary business expenses as required by California law; (6) failure to maintain proper payroll records as required by California law; (7) failure to provide accurate itemized wage statements as required by California law; (8) compelling or coercing Plaintiff and the class to purchase or lease vehicles and other equipment in violation of California law; (9) willful misclassification of independent contractors in violation of California law; (10) failure to pay all wages due at termination as required by California law; (11) unfair business practices under the California Business and Professions Code; (12) unlawful sale of business opportunities under Oklahoma law; (13) deceptive and unfair trade practices under Oklahoma law; (14) deceptive trade practices under Oklahoma law; (15) constructive fraud and negligent misrepresentation under Oklahoma law; (16) unjust enrichment; and (17) statutory penalties under the California Private Attorneys General Act (“PAGA”)

5. **Classes.** The “Classes” at issue in this settlement are defined as follows:

California Class – All current and former individuals, to the extent they performed transportation services for John Christner Trucking, LLC (JCT) within California from April 12, 2013 to the date the Court grants preliminary approval of the settlement (Preliminary Approval Date), who (1) entered into an Independent Contractor Operating Agreement (ICOA) with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, LLC, and (3) were classified as independent contractors.

Oklahoma Class – All current and former individuals who provide(d) transportation services for JCT within the United States, who (1) entered into an ICOA with JCT, and (2) entered into a Lease Agreement with JCT or Three Diamond Leasing, from April 12, 2014 to the Preliminary Approval Date.

Fair Labor Standards Act (FLSA) Collective Members – All current and former individuals who provided transportation services for JCT within the United States, between May 1, 2015 and the Preliminary Approval Date, who (1) entered into an ICOA with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, (3) were classified as independent contractors, and (4) validly opted in to the FLSA collective on or before February 14, 2020 (FLSA Collective Members). FLSA Collective Members are all identified in **Exhibit 1** hereto.

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 one or more of the Classes, 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 2** 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. **California Class Period.** “California Class Period” shall mean April 12, 2013, and continuing through the Preliminary Approval Date.

11. **Collective Period.** “Collective Period” shall mean May 1, 2015, and continuing through the Preliminary Approval Date.

12. **Complaint.** “Complaint” shall mean the Class and Collective Action Complaint filed on July 12, 2017, in this Action.

13. **Court.** “Court” shall mean the U.S. District Court for the Northern District of Oklahoma.

14. **Defendant.** “Defendant” shall mean John Christner Trucking, LLC.

15. **Defense Counsel.** “Defense Counsel” shall mean Christopher J. Eckhart and Angela S. Cash, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 West Market Street, Suite 1400, Indianapolis, Indiana 46204.

16. **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. In this regard, 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 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.

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

18. **FLSA Collective Members.** "FLSA Collective Members" shall mean all current and former individuals who provided transportation services for JCT within the United States, between May 1, 2015 and the Preliminary Approval Date, who (1) entered into an ICOA with JCT, (2) entered into a Lease Agreement with either JCT or Three Diamond Leasing, (3) were classified as independent contractors, and (4) validly opted in to the FLSA collective on or before February 14, 2020. Any individual who submitted a Consent to Join Collective Action in this Action but does not meet all of the criteria above shall not be considered an FLSA Collective Member. In his Motion for Final Approval, Plaintiff will request that the Court dismiss the claims of any individual whose Consent to Join Collective Action was deemed invalid without prejudice. As of the execution of this Stipulation, there were approximately 518 FLSA Collective Members. The FLSA Collective Members include individuals identified in **Exhibit 1** hereto.

19. **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.

20. Gross Settlement Amount. “Gross Settlement Amount” shall mean the non-reversionary total amount of **\$9,250,000.00** 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, (d) a Service Award to the Plaintiff as approved by the District Court, and (e) the PAGA Payment. 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.

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

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

23. JCT. “JCT” shall mean John Christner Trucking, LLC.

24. Net Settlement Amount. “Net Settlement Amount” shall mean the Gross Settlement Amount less (a) Administrative Expenses, (b) Class Counsel’s claims for attorneys’ fees, costs and expenses as approved by the District Court, (c) a Service Award to Plaintiff as approved by the District Court, and (d) the PAGA Payment, and shall be the maximum amount to be distributed to Class Participants.

25. Oklahoma Class Period. “Oklahoma Class Period” shall mean April 12, 2014, and continuing through the Preliminary Approval Date.

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

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

28. **PAGA.** “PAGA” shall mean the California Private Attorneys General Act of 2004, California Labor Code §§ 2699, *et seq.*

29. **PAGA Payment.** “PAGA Payment” shall mean the funds allocated for the settlement and full release of any and all claims for civil penalties that could have been made in this Action by the California Class Members under PAGA.

30. **Parties.** “Parties” shall mean Plaintiff and Defendant.

31. **Plaintiff.** “Plaintiff” shall mean Plaintiff, Thomas Huddleston.

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

33. **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 Plaintiff 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 the facts, theories, and claims pled in the Complaint. The Released Claims include, but are not limited to, all wage and hour claims, whether known or unknown, at law or in equity, which Plaintiff and the Class Members may now have or may have as of the execution of this Stipulation under the wage orders of the California Industrial Welfare Commission, or other federal, state, or local law, claims for penalties under PAGA, all claims for failure to pay minimum wages under California law, all claims for failure to pay for all hours worked under California law, all claims for failure to authorize and permit and/or make available

meal and rest periods pursuant to the California Labor Code (Labor Code), all claims for failure to reimburse for necessary business expenses under Labor Code § 2802, all claims for failure to maintain proper payroll records under Labor Code § 1174, all claims for failure to provide accurate itemized wage statements under Labor Code § 226, all claims regarding coerced purchases under Labor Code § 450, all claims regarding willful misclassification under Labor Code § 226.8, all claims for waiting time penalties under Labor Code §§ 201-204, all claims for unlawful business practices under the California Business and Professions Code §§ 17200, *et seq.*, 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.*; statutory penalties, civil penalties under PAGA, California Labor Code §§ 2699 *et seq.*, all claims for constructive fraud and negligent misrepresentation; and all claims for unjust enrichment. For Plaintiff and the FLSA Collective Members only, the Released Claims also include any and all claims, known or unknown, under the FLSA, 29 U.S.C. §§ 206, *et seq.*, that were pled or could have been pled based on the factual allegations of the Complaint.

34. Released Parties. “Released Parties” shall mean Defendant, and its present and former parent companies, subsidiaries, divisions, affiliates, successors, predecessors, related companies, and 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.

35. Service Award. “Service Award” shall mean any additional monetary payment provided to Plaintiff for his efforts on behalf of the Classes in this Action.

Defendant shall not object to Plaintiff requesting a Service Award in an amount up to \$25,000.

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

37. **Settlement Administrator.** “Settlement Administrator” shall mean Settlement Services, Inc. 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.

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

II. **FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

1. **Plaintiff’s Claims.** On April 13, 2017, Plaintiff filed his original Complaint in the U.S. District Court for the Northern District of California, under Case No. 3:17-cv-02081-LB. That District Court dismissed the case without prejudice for improper venue. Plaintiff refiled this case on July 12, 2017 in the U.S. District Court for the Eastern District of California, under Case No. 1:17-cv-00532. The case was subsequently transferred to the U.S. District Court for the Northern District of Oklahoma, Case No. 4:17-cv-00549-GKF-FHM.

The Complaint alleges that Defendant misclassified drivers as independent contractors, misrepresented the nature of the driving opportunity it offered drivers, and asserts the following claims for relief: (1) failure to pay wages and the minimum wage under the FLSA; (2) failure to pay the minimum wage under California law; (3) failure to pay wages for all hours worked under California law; (4) failure to authorize and permit and/or make available meal and rest periods as required by California law; (5) failure to reimburse for necessary business expenses as required by California law; (6) failure to maintain proper records as

required by California law; (7) failure to provide accurate itemized wage statements as required by California law; (8) compelling or coercing Plaintiff and the class to purchase or lease vehicles and other equipment in violation of California law; (9) willful misclassification of independent contractors in violation of California law; (10) failure to pay all wages due at termination as required by California law; (11) unfair business practices under the California Business and Professions Code; (12) unlawful sale of business opportunities under Oklahoma law; (13) deceptive and unfair trade practices under Oklahoma law; (14) deceptive trade practices under Oklahoma law; (15) constructive fraud and negligent misrepresentation under Oklahoma law; (16) unjust enrichment under Oklahoma law; and (17) civil penalties under PAGA.

Defendant has denied and continues to deny any liability to Plaintiff and Class Members and has raised various defenses to the Claims.

2. **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 Plaintiff; (b) inspection and analysis of documents and data produced by the Plaintiff 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, and the risks of decertification before the Tenth Circuit Court of Appeals; (e) analysis of potential classwide damages; (f) research of the applicable law with respect to the claims asserted in the Complaint 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 Plaintiff 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 Plaintiff and of Defendant's defenses to them.

3. **Allegations of Plaintiff and Benefits of Settlement.** The extensive discovery conducted in this matter, as well as discussions between Class Counsel and Defense Counsel, have been adequate to give Plaintiff 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 Tenth Circuit mediator, David Aemmer, after arm's-length bargaining by the Parties during a full-day, remotely-held mediation session and subsequent settlement discussions. The discovery conducted in this Action – both formal and informal – 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.

Plaintiff and Class Counsel believe that the Claims have merit. However, Plaintiff 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 Plaintiff 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 Plaintiff and Class Members.

4. **Defendant's Denial of Wrongdoing and Liability.** Defendant denies each and every one of the claims and contentions alleged by Plaintiff 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, as well as all applicable provisions of California law and Oklahoma law cited in the Complaint. Defendant further denies that, for any purpose other than settling this Action, the Claims are appropriate for class or representative treatment. Nonetheless, Defendant has concluded that 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.

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 Plaintiff 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 NINE MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$9,250,000.00) 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 Plaintiff, (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 Plaintiff as approved by the District Court, (f) the PAGA Payment, and (g) any other obligation of Defendant under this Stipulation.

2. **Service Award for Plaintiff.** Plaintiff may, at the discretion of the Court, receive a Service Award, subject to Court approval, in an amount up to \$25,000 for his 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 Plaintiff for the Service Award, provided that, in exchange for receipt of a Service Award, Plaintiff executes the release provided for in this Stipulation, which release will be effective upon the Effective Date. Any Service Award approved by the Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to any distribution to which Plaintiff may otherwise be entitled as a Class Participant. The Settlement Administrator will report the Service Award paid to Plaintiff on an IRS Form 1099. Plaintiff shall be responsible for the payment of any and all taxes with respect to his 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, Section 2.

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 Plaintiff on an IRS Form 1099. In the event any portion of Individual Settlement Amounts paid to Plaintiff 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, Plaintiff and the Class Participants shall pay any and all such taxes, interest, and penalties on the amount they receive.

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 \$150,000.00, which will be heard by the Court at the Final Approval and Fairness Hearing. Defendant agrees not to object to any such fee, cost or expense application as described above. 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 Plaintiff 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 35 days¹ of the Effective Date out of the Gross Settlement Amount in accordance with Article VII, Section 3 of this Stipulation.

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

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

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 28 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.

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.

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 28 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 had a pick-up or a drop-off in the State of California during the California Class Period which shall be the method of determining whether any Class Member performed transportation services within California (California Workweeks); (b) total weeks during which each Class Member performed any work in the United States of America during the Oklahoma Class Period (Oklahoma Workweeks), and (c) total weeks during which each FLSA Collective Member performed any work 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 35 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 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. 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. 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 does not 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.

4. **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 and deliver a written objection with 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 that the Court should find that the Settlement is not in the best interest of the Class Members and the reasons why the Settlement should not be approved, including the 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 their 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 pursuant to 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.

5. **Disputes.** To the extent that any Class Member disputes the number of California Workweeks that the Class Member worked during the California Class Period for members of the California Class, or the number of Oklahoma Workweeks that Class Member worked during the Oklahoma Class Period for members of the Oklahoma Class, or any FLSA Collective Member disputes the

number of FLSA Workweeks 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 California Workweeks for the California Class, or 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 and to the extent such information exists in Defendant's 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 California Workweeks for the California Class or 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 a resolution. The Settlement Administrator will notify the disputing Class Member or FLSA Collective Member of the decision.

6. **Notice of Settlement to State and Federal Officials.** On the same day that Class Counsel files a Motion for Preliminary Approval of this Stipulation and Settlement, Class Counsel shall provide notice of the Settlement to the California Labor and Workforce Development Agency (LWDA) as required by

California Labor Code § 2699(I)(2). 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 and LWDA. Within 10 days after the Effective Date, Class Counsel shall provide a copy of the Final Order Approving Settlement and Judgment to the Settlement Administrator and to the LWDA as required by California Labor Code § 2699(I)(3).

2. Allocation of the Gross Settlement Amount. The claims of all Class Members are settled for the Gross Settlement Amount of \$9,250,000, 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. PAGA Payment. A total of \$100,000 is allocated to penalties associated with Plaintiff's PAGA claim; \$75,000 (75% of the \$100,000 allocation) is to be paid to the LWDA, the remaining \$25,000 (25% of the \$100,000 allocation) will be distributed pro rata to Class Participants as set forth in Section 3. If the Court determines this amount is insufficient, the parties agree to reallocate the Net Settlement Amount to comply with the Court's ruling (i.e., to allocate to the LWDA whatever amount is necessary to satisfy the Court's concerns).
- e. 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 as compensation for claims under the FLSA.
- ii.** California Class Members will receive 2 settlement shares for each California Workweek as compensation for claims under California law, including penalties under PAGA.
- iii.** Oklahoma Class Members will receive 2 settlement shares for Oklahoma Workweek 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 35 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 35 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 35 days of the Effective Date or the completion of its duties under this Stipulation, whichever is later.

7. **Time for PAGA Payment to LWDA.** Within 35 days of the Effective Date, the Settlement Administrator will send the amount of the PAGA Payment allocated to the LWDA to: Department of Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102.

8. **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 35 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, 6, and 7 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.

9. 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* to Legal Services Corporation. 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.

10. 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.

11. 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 should for any reason fail to approve this Stipulation in the form agreed to by the Parties, 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 may 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.

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.

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. MOTION FOR COURT APPROVAL

1. **Joint Motion for Limited Remand and Abatement of Appeal.**

Within 14 days of the execution of this Stipulation of Settlement, the Parties will jointly move for limited remand of this case to the U.S. District Court for the Northern District of Oklahoma for the purpose of considering and ruling on Plaintiff's motions for preliminary and final approval of the Settlement. If the District Court does not approve the Settlement as contemplated under Article IX, Sections 2 and 3, or this Stipulation is voided for any other reason, the Parties will ask the Tenth Circuit Court of Appeals to reinstate the proceedings in the appeal.

2. **Preliminary Approval.** Class Counsel will submit this Stipulation to the Court and request preliminary approval of the Settlement within 30 days of the Tenth Circuit Court of Appeals' limited remand of this Action to the U.S. District Court for the Northern District of Oklahoma. 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 Northern 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 Plaintiff expressly waive, as to only the Released Claims based on or arising out of the same factual predicates of the Complaint, running through the date of Preliminary Approval, the provisions, rights, and benefits of California Civil Code § 1542 (Section 1542), which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

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 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 Plaintiff.

Each Class Participants and Plaintiff 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 Plaintiff.** Plaintiff, in exchange for receipt of a Service Award approved by the Court, on behalf of himself and his 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 California Fair Employment and Housing Act; (m) the California Constitution; (n) the California Labor Code; (o) the California Government Code; (p) the California Civil Code; (q) the California Business and Professions Code; (r) the California Franchise Investment Code; (s) the California Corporations Code; (t) the Fair Labor Standards Act; and (u) 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.

Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of Section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits he may have under Section 1542 as well as any other statutes or common law principles of a similar effect. Plaintiff 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, Plaintiff shall and hereby does 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.

Plaintiff also agrees that, to the extent permitted by law, if a claim is prosecuted in his name against any of the Released Parties before any court or administrative agency prior to the Effective Date, he waives, and agrees not to take, any award of money or other damages from such proceeding. Plaintiff agrees that, unless otherwise compelled by law, if a claim is prosecuted in his name against any of the Released Parties, he will immediately request in writing that the claim on his behalf be withdrawn.

3. **Release of Monetary Claims.** Subject to Court approval, the Parties agree that Defendant will release Class Participants who were not under contract with Defendant as of the date of Preliminary Approval, from all known and unknown monetary claims.

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 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. **Voiding the Stipulation.** Pending Court approval and other than as provided in Article VIII herein, if any of the conditions set forth in this Stipulation are not met and satisfied, this Stipulation shall, at the option of either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and shall not be used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.

2. **Different Facts.** The Parties acknowledge that, except for matters expressly represented herein, the facts in relation to the dispute and all claims released by the terms of this Stipulation may turn out to be other than or different from the facts now known by each party and/or its counsel, or believed by such party or counsel to be true, and each party therefore expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this Stipulation shall be in all respects effective and binding despite such difference.

3. **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.

4. **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.

5. **Confidentiality.** Plaintiff 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 discovery proceedings therein, 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 Plaintiff only. Plaintiff shall also be informed that the Settlement is confidential and shall be advised to keep the Settlement confidential. After preliminary approval of the Settlement, Plaintiff 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.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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 companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

14. 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 Plaintiff.

15. 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.

16. 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.

17. 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.

18. 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.

THOMAS HUDDLESTON

JOHN CHRISTNER TRUCKING, LLC

Thomas Huddleston

By: _____

Dated: 05 / 12 / 2022

Printed Name and Title

Dated: _____

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

19007 West Highway 38
Sapulpa, OK 74067

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.

THOMAS HUDDLESTON

Dated: _____

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

JOHN CHRISTNER TRUCKING, LLC

By: 

Daniel L. Christner ; CEO JCT
Printed Name and Title

Dated: 5/12/22

19007 West Highway 38
Sapulpa, OK 74067

APPROVED AS TO FORM AND CONTENT

SCHNEIDER WALLACE
COTTRELL KONECKY LLP

SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, P.C.

By: 
David Leimbach

By: _____
Christopher Eckhart

Dated: May 13, 2022

Dated: _____

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

SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, P.C.
10 West Market Street, Suite 1400
Indianapolis, IN 46204

LATHAM WAGNER STEELE
LEHMAN
Bobby L. Latham, Jr.
James L. Colvin, III
1515 E. 71st St., Suite 200
Tulsa, OK 74136


Attorneys for Defendant, John Christner
Trucking, LLC

APPROVED AS TO FORM AND CONTENT

SCHNEIDER WALLACE
COTTRELL KONECKY LLP

SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, P.C.

By: _____
David Leimbach

By:  _____
Christopher Eckhart

Dated: _____

Dated: May 13, 2022

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

SCOPELITIS, GARVIN, LIGHT,
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10 West Market Street, Suite 1400
Indianapolis, IN 46204

LATHAM WAGNER STEELE
LEHMAN
Bobby L. Latham, Jr.
James L. Colvin, III
1515 E. 71st St., Suite 200
Tulsa, OK 74136

Attorneys for Defendant, John Christner
Trucking, LLC

Exhibit 1

Name	Opt-In Number
Thomas Huddleston	1
Robert Lewis	2
Roy Bittner	3
Douglas D. Burnett II	4
John Henshaw	5
Salvador Ponce	6
Serio M. Cuevas Soto	7
John Bright	8
David Podoll	9
Kenneth Snyder	10
Earl Sampson	11
Roland Dorman	12
June Shastid	13
Jeremy Musser	14
Brando Brewer	15
John Vanaken	16
Jami Boundinot	17
Anthony Boccardi	18
Daniel Snyder	19
Anthony Turner	20
Kenneth Kimbley	21
Shrandell Curry	22
Gary Lenihan	23
Helsie Vathauer	24
Luther Starling	25
Sean Price	26
Matthew Barrette	27
Roy Martin	28
Terry Bailey	29
Eileen Fisher	30
Adrian Smith	31
Curtis Wiggins	32
Rodney Elwell	33
Robert Martin	34
Raymond Borja	35
Tom Spafford	36
Curtis Anderson	37
Judith Pratt	38
Bryan Wallace	39
Joel Lance Holbrook	40
Bradely Boardman	41
Robert James	42
Edward St Jude	43
Timothy Schaefer	44
Todd Harroun	45
Marcus Gillespie	46

Sidney Allen	47
Anthony Tennant	48
Anthony Edwards	50
Neika Gates	51
Don Voetberg	52
Maurice Brown	53
Charles Thomas	54
Erik Galloway	55
Phillip McWhorther	56
Germaine Willams	57
Steven Hines	58
Shawntale Strange	59
Joseph Rodriguez	60
Christian Clarke	61
Steven Walker	62
Anthony Conners	63
Wade Israel	64
Ramon Fontes	65
Ladell Richmond	66
Troyan Bedford	67
John McManess	68
Demetrius McQueen	69
Warren Ward	70
Toney Bynum	71
Juan Perez-Garcia	72
Kamau Michael	73
Robert Thompson	74
Jaquon Dick	75
Kendall Corner	76
Jason Cree	77
Tiffany Havens-Guthrie	78
Shonee Jackson	79
Darvin Scott	80
Dennis Borrow	81
Cameron McDowell	82
Davey Davis	84
Virgil Jones	85
Juan Vidito	86
George Brannon	87
Franklin Breeden	88
Andrew Hampton	89
Terrance Washington	90
James Murphy	91
Wilbur Brown	92
Edward Judson	93
Cleaven Hunter	94
Joseph Heidelberg	95

Jacqueline Williams	96
Leroy Rushing	97
Adam Baker	98
James Bourland	99
Virgil Moran	100
Henry and Debbie Cherry	101
Robert Becker	102
Bobby Borkowski	103
Terry Hiatt	104
Billy Tyler - withdrawn 9/11/18	105
Martavius Smith	106
Rene Vega	107
Dennis Veyette	108
Jennifer Lynn	109
Matthew Proffer	110
Robert Williams	111
Clifton Hammock	112
Caleb Lavi	113
Terrance Webb	114
Gregory Robinson	115
Antwon Smith	116
Edgar Alarcon Jr.	117
Curtis Matthew	118
Joshua Malone	119
Randy Clark	120
Sandra Booker	121
Thomas Caffrey	122
Nathan Harvey	123
Joshua Corse	124
Aaron Covington	125
Brandon Logan	126
Douglas Meyer	127
Kelvin Harris	128
Jason Lejeune	129
William Dawdy	130
Earl Turner	131
Lowell Fenton	132
Cheryl Chub	133
Clyde Williams	134
Earl Johns	135
Peter Brown	136
Robert Garcia	137
Robert Quintin	138
Duane McConnell	139
Raymond Alcala	140
Heather George	141
Dan Crombie	142

Jacob Nielger	143
Leon Fells	144
John Cook	145
Ronald C. Chandler	146
Robert Grisby	147
Sean Underwood	148
William Bittner	149
Enrico Paolo Javier	150
Thomas Bohne III	151
Mariah Jenkins	152
Jerry Thomas	153
Keith Mansfield	154
Margaret Shick	155
Mushtag Zokari	156
Ryan Cooper	157
Darren Collins	158
Ellen Cannon	159
Michael Crowder	160
John Baker	161
David Mattingly	162
Ronald Conway	163
Shona Harless	164
Vernie Clifford Hudson, Jr.	165
Ron Cooper	167
Ronald Almy Jr.	168
Charles Goldman	169
Homer Barrett	170
Mark Soukup	171
Irmantas Petravicius	172
Anthony Barton	173
James Daniels	174
Jessie Chesteen	175
Robert Roberts	176
Jamie Salisbury	177
Victor Francois	178
Eric Nation	179
Paul Carroll	180
David Piearcy	181
Gene Aldridge	182
Wesley Wells	183
Ritchie King	184
Phillip Hester	185
Norman Vann	186
Jason Gato	187
William Walters	188
Suzanna Maria Canchola	189
Matthew Beck	190

William Brunelle	191
Lawrence McKinney	192
Patrick Ceiga	193
Richard Owens	195
George Cross	196
Robert Lake	197
Ronald Catoe	198
Ronald Stevens	199
Dax James	200
Kenzie Townsend	201
Shannon Carson	202
Larry Stapp	203
Cameron Carignan	204
Maurice Morehead	205
James D. Ellis	206
John Williams	207
Terrance Hardy	208
John D. Graucs Jr.	209
David Hairston	210
Dante R. Goins Sr.	211
George Nelson Miller	212
Dennis Van Meter	213
David H. Waldron	214
Christopher Dover	215
Adrain Smith	216
Corrye Andrews	217
Luther N. Hines	218
Joshun Corse	219
Ruben Smith	220
William Hull	221
Melissa Hamilton	222
James Jackson	223
John Keith Thompson Sr.	224
Jonathan Lee	225
Eric S. Peach	226
Erick Reid	227
Christopher Jordan	228
Charles V. Rodgers	229
Joe E. Hill	230
Garry G. Pace	231
Robert A. Wilkowski	232
Michael Fields	233
Juan Gomez-Rosa	234
Andy Jensinger	235
Clinton Bready	236
Stanley Brown	237
Joseph Sherman	238

John Leija	239
Jeff Ford	240
Jason Jenkins	241
Charles Schreckenbach	242
Anthony Matuzak	243
Randa L. Light	244
David Mattingly	245
Richard A. Cox	246
John C. Holder	247
Wayne McCann	248
Willie Bell	249
Vernon Hawthorne	250
Al Rasheed Baskerville	251
Galen D. Cronin	252
David Morton	253
Steven Mason	254
Daniel Bayless	255
Taurean Morsell	256
Gary Garrett	257
Michael K. Akins	258
Deon Redd	259
Damon C. Gaudet	260
Marcial Zambrano	261
Harry Aldridge	262
Allen F. Brush, Jr.	263
Jonathan Endicott	264
Ricky E. Franklin	265
Tony Carlos Kimble	266
Mickey Landrum	267
John Damron	268
Antony Rice	269
Mitchel Hall	270
DeAunte Hale	271
Willie J. Rogers, Jr.	272
Frank A. Smith	273
Richard Cook	274
Abelardo Durazo Jr.	275
Ivan French	276
LeBarron Coates	277
Arman Ghevondyan	278
Earl Eugene Boen Jr.	279
Gavin O'Connor-Keene	280
Kyle Holder	281
Clarence Nathan	282
Ryan Whitehead	283
Victor Foreman	284
Garret K. Taft	285

Jason W. MacDonald	286
Bryna Content-Watkins	287
David E. Dennis	288
James Franklin	289
Kelly Davis	290
Catherine Tijerina	291
Richard Steen	292
Ira Smith	293
Andre Story	294
Marcus Barkley	295
Michael C. Paugh	296
Jonathan R. Jenkins	297
Darren Farr	298
Curtis L. Lewis	299
Dale Johnson	300
Brian Wagner	301
Eddie Smith III	302
Bobby Sloan	303
David Tucker	304
Ramiro Ramirez	306
Cynthia Redding	307
John Pettigrew	308
Vincent Howard	309
Richard Budin	310
Robert Moore	311
Joseph Steele	312
Alice Byrd	313
Scott Wollbrink	314
Laura Lemon	315
Christopher Pelletier	316
David Parrack	317
Arash Tehranchi	318
Alvis Mitchell	319
Randall Tarwater	320
Joe Spearman	321
Elliott Mergler	322
James Cofield	323
Stephen Qualls	324
Sherman W. Higgs	325
Frederick Altherr	326
Clinton Selby	327
Morris F. Culp Jr.	328
Ross R. Dicks Jr.	329
Patrick Burke II	330
Jeremiah T. Ferguson	331
Michael Lake	332
Kevin W. Johnson	333

James Robins Jr.	334
Julian Rusell	335
Reginal Douglas	336
Craig R. Trotter	337
Willis L. Johnson Sr.	338
Willis James Stephens	339
Marcelino R. Garza	340
Jamaal Simpson	341
Ricky Reed	342
Clifton Foster	343
Charles D. Polk	344
Clint Welch	345
Jackie P. Davidson	346
Chairyl Reneé Meadows	347
Thomas J.S. Maserang	348
Martha Moseley	349
Christopher A. Little	350
John Simon	351
Timothy Wayne Martin	352
Roger Clements	353
Kazem Mousavi	354
Christopher and Vanetta Johnson	355
Daniel Tesla	356
Soven M. Wiley	357
Curt Stevens Sr.	358
Daniel Lee Gowen	359
Anthony Johnson	360
Darren A. Davis	361
Walid Omar	362
Nancy A. Ransom	363
Sonya Owens	364
Lance Calvert	365
Leslie D. Williams	366
Marnell Guevara Santiago	367
Bernadette Williams Brown	368
Jason Torres Burgos	369
Randy Griffith	370
Brian Kelly	371
Darrell Lawler	372
Jorge Ortiz	373
Alton Lemley Jr.	374
Richard Estridge	375
Vanetta Johnson	376
Robert Maclean	377
Jimmy L. Copeland	378
Brian H. Long	379
Elton Longstreet	380

Aaron Collier	381
Michael Lee Taylor	382
Francisco Marquez	383
Joshua Ewing	384
Tristin Vigil	385
Stefen Oakes	386
Cassius Gibson	387
Barbara Crabtree	388
Stacey Garcia	389
Louis Gentry	390
Keifro Mickle	391
Jamie Wayne Persons	392
Randy White	393
Fred Kelly	394
Anthony De La Fuente	395
Christopher Marocco	396
Georgina Ray	397
Scott A. Tullock	398
Bradley Johnson	399
Robert Pressey	400
Charles Wilson	401
Garry D. Reagan	402
Daniel De La Garza	403
Raymond Glaze	404
Quentin Lee Mays	405
Adam Zimmerman	406
Joe W. Deason	407
Lloyd A. Walker	408
Brandon K. Dunagan	409
Eric Beavers	410
Steven Denman	411
Andrew Greene	412
Ervin Winn	413
Donald R. Law Jr.	414
David E. Henderson	415
Davonn Hawkins	416
Jose Porto-Iglesias	417
Kevin Behlmer	418
Timothy Bennett	420
Arnold W. Wilson	421
Bud A. Tackett	422
Kenneth R. Royal	423
David Grissler	424
Tony Dawkins	425
Donna Clark	426
Michael Cotter	427
Paul R. Cooper	428

Christopher Staton	429
Willie Simmons	430
Reggie Rawls	431
William V. Morris	432
Robert J. Alexander	433
Devin Cottrell	434
Christopher Rush	435
Dacota Dossett	436
Darryl Jordan	437
Joseph Lasenberry	438
Samuel Thorton	439
Rashed F. Strong	440
Christopher W. Robertson	441
Richard Erdman	442
Jose Angel Cintron	443
Christopher Hood	444
Kelvin Davis	445
Ernest E. Haefner	446
David Newhouse	447
Stacy Lee Shepherd	448
Katie Harlow	449
Dylan McKinstry	450
Randolph Scott	451
Fernando Johnson	452
Michael Hemingway	453
Charles Bellamy	454
Michael T. Holder	455
James Teigland	456
Patti Hodge	457
Shawn Seigler	458
Luis Bigay	459
John Bennett	460
David Lane	461
Lori LaRosa	462
Jason Hopkins	463
Dennis Ducre	464
Nancy Amesbury	465
Noel Zaragoza	466
Aaron Thornton	467
Anthony Perry	468
Tyson Lee Earley	469
Roger Allen Epstein	470
Robert Evans	471
Robert M. Herron	472
John Madison	473
Steven Harlow	474
James Tull	475

Sheila Knight	476
Maurice Saddler	477
Scott C. Rugherford	478
Shawn Franks	479
Terry Felice	480
Larry Mumphrey Jr.	481
Steven Byrd	482
Joe Salcido	483
Branden Green	484
Dennis Scott	485
Robert Murphy	486
Shawn P. Camp	487
Charles Curry Whisenhunt	488
Charles M. Jones Jr.	489
Dawn Kelley	490
Eugene Barnett	491
John Canon	492
Sandra Sullivan	493
Richard Coleman	494
John Solliday	495
Jose Luis Cintron	496
Reginald Williams	497
Richard Dilling	498
Richard Allen Robinson III	499
Robert Atkinson	500
Albert Wall	501
Ronald Singleton	502
Sharon Sue Elkins	503
Thomas Ray Hergenrede	504
David Strange	505
Keith Carter	506
Fred Maxwell	507
Joshua Clark	508
Pamela Lott	509
Jimmy Finley Jr.	510
Yuri Di Biaggio	511
William E. Williams	512
Arthur T. Thomas	513
Michael Earl Bailey	514
Donald B. Custer	516
Stephanie Evans	517
John Keller	518
Cohlonee S. Bacon	519
Robert F. Sartori	520
Kenneth Steele	521
David Thompson	522
Stephen Messing	523

Shelton Murray	524	
Christopher Haggerty	525	

Exhibit 2

Huddleston s. John Christner Trucking, LLC
Case No. 4:17-cv-00549-GKF-FHM (N.D. Okla.)

NOTICE OF SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY.

You received this Notice of Settlement (Notice) because you (1) previously completed a valid Opt-In Consent Form to join this case; or (2) the records of John Christner Trucking, LLC (Defendant) show you qualify as a member of the California Class and/or the Oklahoma Class as defined in Section 3. Both groups are considered "Class Members" in this Notice. Because you are a Class Member, **you may be entitled to receive money from a Settlement in this case, as described below.**

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself (opt out) of the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement in the event the Court denies your objection.

The United States District Court for the Northern District of Oklahoma has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on [REDACTED], 2022 at [REDACTED], before the Honorable Gregory K. Frizzell at [REDACTED].

2. What Is This Case About?

This lawsuit alleges that Defendant improperly classified Class Members as independent contractors instead of as employees, and Class Members were not provided meal and rest breaks, were not compensated for all hours worked, were not paid minimum wage, were not paid all wages due upon termination, were not provided timely and compliant itemized wage statements, were not reimbursed for necessary business expenses, and were subject to unfair business practices. This lawsuit also alleges Defendant misled Class Members into joining its lease operator program. This lawsuit seeks recovery of unpaid wages, statutory damages, civil penalties, restitution, interest, attorneys' fees and costs. The claims in this lawsuit are brought under federal law, California law, and Oklahoma law.

Defendant contends that it has strong legal and factual defenses to these claims, but recognizes the risks, distractions, and costs associated with litigation. Defendant contends that it properly classified Class Members as independent contractors, and that the policies challenged by Plaintiff, including those regarding payment for time worked, meal breaks, rest breaks, and expense reimbursements, are lawful and have been lawful throughout the relevant time period. Defendant

Questions? Visit www.JohnChristnerTruckDriverSettlement.com, call toll-free [REDACTED] or email [REDACTED]

further denies that it misled any Class Member about its lease operator program. Defendant also contends that Plaintiff's claims do not meet the requirements for class or collective certification.

This Settlement is the result of good faith, arm's length negotiations between Plaintiff and Defendant, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses.

3. What Are the Terms of the Settlement?

Defendant has agreed to pay \$9,250,000.00 to settle this lawsuit (Gross Settlement Amount). Deductions from this amount will be made for attorneys' fees and costs for Class Counsel (see Section 10 below), settlement administration costs (estimated to be \$ [REDACTED]); a service award in an amount not to exceed \$25,000.00 to Plaintiff, Thomas Huddleston, for his service to the Class Members, and \$75,000.00 to the California Labor and Workforce Development Agency (LWDA), which is 75% of the \$100,000.00 the parties allocated to penalties associated with Plaintiff's claim under the California Private Attorneys' General Act (PAGA). After deductions of these amounts, what remains of the Gross Settlement Amount, or the Net Settlement Amount, will be available to pay monetary Individual Settlement Amounts to (i) Plaintiff; and (ii) Class Members who do not opt out of the Settlement (collectively, Class Participants).

The following persons will be considered "Class Members" and be eligible to receive an Individual Settlement Amount from the Net Settlement Amount: Plaintiff and persons who meet the requirements of one or more of the following class or collective definitions:

California Class – All current and former individuals, to the extent they perform(ed) transportation services for Defendant within California from April 12, 2013 to [Preliminary Approval Date] (California Class Period), who (1) entered into an Independent Contractor Operating Agreement with Defendant, (2) entered into a Lease Agreement with either Defendant or Three Diamond Leasing, LLC, and (3) were classified as independent contractors.

Oklahoma Class – All current and former individuals who provide(d) transportation services for Defendant within the United States, who (1) entered into an Independent Contractor Operating Agreement with Defendant, and (2) entered into a Lease Agreement with Defendant or Three Diamond Leasing, LLC, from April 12, 2014 to [Preliminary Approval Date] (Oklahoma Class Period).

FLSA Collective Members – All current and former individuals who provide(d) transportation services for Defendant within the United States, between May 1, 2015 and [Preliminary Approval Date] (FLSA Collective Period), who (1) entered into an Independent Contractor Operating Agreement with Defendant, (2) entered into a Lease Agreement with either Defendant or Three Diamond Leasing, LLC,

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(3) were classified as independent contractors, and (4) validly opted in to the FLSA collective on or before February 14, 2020 (FLSA Collective Members).

As a part of this settlement, Defendant has also agreed to release Class Members that are former drivers as of the date of final approval from all known and unknown monetary claims.

4. How Much Can I Expect to Receive?

According to records maintained by Defendant, your total estimated Individual Settlement Amount is \$ [REDACTED]. This amount is an estimated amount, and your final Individual Settlement Amount is expected to differ from this amount (i.e., it could be higher or lower) and will be calculated as further explained in this section.

The settlement administrator will determine all Individual Settlement Amounts based on Defendant's records of the weeks worked by Class Members. Based on Defendant's records, you are estimated to have worked (1) [REDACTED] workweeks for Defendant in California (which is defined as a week in which you made at least one pick-up or drop-off in California) during the California Class Period (California Workweeks); (2) [REDACTED] workweeks for Defendant in the United States during the Oklahoma Class Period (Oklahoma Workweeks); and, if you are also an FLSA Collective Member, (3) [REDACTED] workweeks in the United States during the FLSA Collective Period (FLSA Workweeks).

Each Class Participant (as described in Section 3) will receive a *pro rata* share of the Net Settlement Amount based on settlement shares assigned to them as described below.

Each Class Participant will receive:

1. Two (2) settlement shares for each California Workweek;
2. Two (2) settlement shares for each Oklahoma Workweek; and, if applicable,
3. One (1) settlement share for each FLSA Workweek.

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

If you dispute the number of workweeks as shown on this Notice, you may produce evidence to the settlement administrator establishing the dates you contend to have worked for Defendant. To do so, send a letter to the settlement administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence proving you worked more workweeks than shown by Defendant's records, your Individual Settlement Amount will be determined based on Defendant's records. Any disputes must be postmarked by [INSERT DATE] and should be mailed to [INSERT SETTLEMENT ADMINISTRATOR ADDRESS] and/or

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emailed to [INSERT SETTLEMENT ADMINISTRATOR EMAIL]. The settlement administrator will notify you of the decision on the dispute.

For tax reporting purposes, all Individual Settlement Amounts will be reported on an U.S. Internal Revenue Service (IRS) 1099 Form. In the event any portion of the Individual Settlement Amounts paid to Plaintiff and Class Participants is ultimately construed by the IRS or any other taxing authority to be taxable income from which taxes should have been withheld, Plaintiff and Class Participants shall pay any and all such taxes, interest, and penalties on the amount they receive. None of the parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Plaintiff and Class Participants should consult with their own tax advisors concerning the tax consequences of the Settlement based on their Individual Settlement Amount.

If you participate in the Settlement, you will have 180 days after the settlement administrator mails your Individual Settlement Amount check to cash it. If you do not cash the Individual Settlement Amount check sent to you within 180 days of issuance, it will become void. If at the conclusion of the 180-day void period, there are any uncashed checks, the settlement administrator will redistribute those monies to Class Participants who did cash their checks. Following redistribution, any unclaimed monies will be paid to Legal Services Corporation. No money will revert to Defendant.

It is your responsibility to keep a current address on file with the settlement administrator to ensure receipt of your monetary Individual Settlement Amount. If you fail to keep your address current, you may not receive your Individual Settlement Amount.

5. What Claims Am I Releasing?

Upon the date the Settlement becomes effective (Effective Date), all Class Participants release claims as follows against Defendant, and their present and former parent companies, subsidiaries, divisions, affiliates, successors, predecessors, related companies, and 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 (collectively, the Released Parties):

- Any and all claims, demands, causes of action, charges, and grievances, of whatever kind or nature, whether known or unknown, suspected or unsuspected, which Plaintiff 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 the facts, theories, and claims pled in Plaintiff's Class and Collective Action Complaint (Complaint). The Released Claims include, but are not limited to, all wage and hour claims, whether known or unknown, at law or in equity, which Plaintiff and the Class Members may now have or may have as of the execution of the Joint Stipulation of Settlement and Release of Class and Collective Action under the wage orders of the California Industrial Welfare Commission, or other federal, state, or local law, claims for penalties under California Private

Questions? Visit www.JohnChristnerTruckDriverSettlement.com, call toll-free [INSERT PHONE NUMBER] or email [INSERT EMAIL]

Attorneys General Act, all claims for failure to pay minimum wages under California law, all claims for failure to pay for all hours worked under California law, all claims for failure to authorize and permit and/or make available meal and rest periods pursuant to the California Labor Code (Labor Code), all claims for failure to reimburse for necessary business expenses under Labor Code § 2802, all claims for failure to maintain proper payroll records under Labor Code § 1174, all claims for failure to provide accurate itemized wage statements under Labor Code § 226, all claims regarding coerced purchases under Labor Code § 450, all claims regarding willful misclassification under Labor Code § 226.8, all claims for waiting time penalties under Labor Code §§ 201-204, all claims for unlawful business practices under the California Business and Professions Code §§ 17200, et seq., 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. §§ 752, et seq.; statutory penalties, civil penalties under PAGA, California Labor Code §§ 2699 et seq., all claims for constructive fraud and negligent misrepresentation; and all claims for unjust enrichment (Released Claims).

- For Plaintiff and the FLSA Collective Members (i.e., individuals who previously completed a valid Opt-In Consent Form to join this case), the Released Claims also include any and all claims, known or unknown, under the FLSA, 29 U.S.C. §§ 206, et seq.

In addition, all Class Participants expressly waive, as to the Released Claims stated above and based on or arising out of the same factual predicates of the Complaint, running through [Preliminary Approval Date], the provisions, rights, and benefits of California Civil Code § 1542, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

As such, the Class Participants understand and agree that they are providing the Released Parties with a full and complete release with respect to the Released Claims.

6. What Are My Rights?

- **Do Nothing:** If you are a Class Member and do not timely and validly opt-out, you will automatically become a Class Participant and receive your prorated Individual Settlement Amount, and you will be bound by the Settlement including its release provisions.

Questions? Visit www.JohnChristnerTruckDriverSettlement.com, call toll-free [INSERT PHONE NUMBER] or email [INSERT EMAIL]

- **Opt-Out:** If you are a Class Member and do not wish to be bound by the Settlement, you must submit a written exclusion from the Settlement (Opt-Out Request), postmarked by [INSERT]. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), last four digits of your social security number, and must be signed individually by you. No Opt-Out Request may be made on behalf of a group. The Opt-Out Request must be sent by mail to the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]. **Any person who requests exclusion (opts out) of the Settlement will not be entitled to any Individual Settlement Amount and will not be bound by the Settlement or have any right to object, appeal, or comment thereon.**
- **Object:** If you received this Notice and wish to object to the Settlement, you must submit a written statement objecting to the Settlement by [INSERT DATE]. The statement must state the factual and legal grounds for your objection to the settlement. The statement must state your full name, address, telephone number, and email address (if applicable), and must be signed by you. The statement must be mailed to the Court at the following address: United States District Court, Office of the Clerk, [INSERT ADDRESS]. You must also mail a copy of your objection to Class Counsel and Defendant's counsel, at the addresses listed in Sections 8 and 9 of this Notice by [INSERT DATE].

If you mail a written objection, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties. Your written objection must state whether you will attend the Final Approval Hearing, and your written notice of your intention to appear at the Final Approval Hearing must be filed with the Court and served upon Class Counsel and Defendant's counsel on or before [INSERT OPT-OUT DEADLINE]. To be heard at the Final Approval Hearing you must also not opt out of the Settlement. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The postmark date of mailing to Class Counsel and Defendant's counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. Objections shall only be considered if the Class Member has not opted out of the Settlement. The failure to submit a written objection as a prerequisite to appearing in court to object to the settlement may be excused upon a showing of good cause.

You may also withdraw your objection in writing by mailing a withdrawal statement to the Court and counsel for the parties postmarked no later than [INSERT DATE – 10 business days before final approval hearing], orally at the Final Approval Hearing, or as otherwise ordered by the Court.

7. Can Defendant Retaliate Against Me for Participating in this Settlement?

No. Your decision as to whether or not to participate in this Settlement will in no way affect your work or relationship with Defendant or future work or relationship with Defendant. It is unlawful

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for Defendant to take any adverse action against you as a result of your participation in this Settlement.

8. Who Are the Attorneys Representing Plaintiff and the Class Members?

Plaintiff and the Class Members are represented by the following attorneys acting as Class Counsel:

Carolyn H. Cottrell
David C. Leimbach
Michelle S. Lim
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Telephone: (800) 689-0024
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
dleimbach@schneiderwallace.com
mlim@schneiderwallace.com

Robert S. Boulter
LAW OFFICES OF ROBERT S. BOULTER
1101 Fifth Avenue, Suite 310
San Rafael, California 94901
Telephone: (415) 233-7100

9. Who Are the Attorneys Representing Defendant John Christner Trucking, LLC?

Defendant is represented by the following attorneys:

Christopher J. Eckhart
Angela S. Cash
Karen B. Reisinger
**SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, P.C.**
10 West Market Street, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 637-1777
Facsimile: (317) 687-2414

Bobby L. Latham, Jr.
James L. Colvin
LATHAM WAGNER STEELE LEHMAN
1515E. 71st St., Suite 200
Tulsa, OK 74136
Telephone: (918) 970-2000
Facsimile: (918) 970-2002

10. How Will the Attorneys for the Class Members Be Paid?

Class Counsel will be paid from the Gross Settlement Amount of \$9,250,000.00. You do not have to pay the attorneys who represent the Class Members. The Settlement provides that Class Counsel will receive attorneys' fees of up to 33.33% of \$9,250,000.00, and costs not to exceed \$150,000.00. Class Counsel will file a Motion for Attorneys' Fees and Costs with the Court. The Court will determine the amount of attorneys' fees and costs to award Class Counsel at the Final Approval Hearing.

Questions? Visit www.JohnChristnerTruckDriverSettlement.com, call toll-free [INSERT PHONE NUMBER] or email [INSERT EMAIL]

10. Where can I get more information?

If you have questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a Class Member, you should contact Class Counsel.

This Notice is only a summary. For the precise terms and conditions of the Settlement, please see the Joint Stipulation of Settlement and Release of Class and Collective Action available at the Settlement website at www.JohnChristnerTruckDriverSettlement.com, contact Class Counsel toll-free at (800) 689-0024, or access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.oknd.uscourts.gov/>.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANT FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.

4867-9589-9673, v. 11

Questions? Visit www.JohnChristnerTruckDriverSettlement.com, call toll-free [INSERT PHONE NUMBER] or email [INSERT EMAIL]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THOMAS HUDDLESTON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

JOHN CHRISTNER TRUCKING, LLC,

Defendant.

Case No. 4:17-cv-00549-GKF-CDL

STIPULATION TO SET FINAL APPROVAL AND FAIRNESS HEARING

Defendant, John Christner Trucking, LLC (JCT), and Plaintiff, Thomas Huddleston (Huddleston), submit the following Joint Stipulation to Set Final Approval and Fairness Hearing.

In support of this Joint Stipulation, the Parties state as follows:

1. On February 26, 2021, the United States Court of Appeals for the Tenth Circuit granted JCT's *Petition for Permission to Appeal from Opinion and Order Granting in Part and Denying in Part Motion for Class Certification, and Order Granting in Part and Denying in Part Defendant's Motion to Reconsider by John Christner Trucking, LLC* as well as Huddleston's conditional cross-petition (ECF No. 246).

2. On April 7, 2021, the parties participated in a Mediation Conference with Tenth Circuit Chief Circuit Mediator David W. Aemmer (Aemmer). (Appellate Doc. No. 010110499420).

3. After several meetings with Aemmer, the parties agreed to participate in a day-long mediation. On September 8, 2021, the parties appeared via Zoom for mediation with Aemmer but the case was not resolved.

4. On November 12, 2021, JCT filed the first brief on appeal. On December 13, 2021, Huddleston filed the second brief on appeal and cross-appeal.

5. Following further numerous, intensive negotiations at arms' length under the guidance of Aemmer, the Parties agreed in principle to settle this matter, and the Parties executed a long-form settlement agreement on May 12, 2022.

6. JCT's and Huddleston's respective deadlines to file the third and fourth briefs on appeal and cross-appeal were subsequently vacated in light of the Parties' Settlement.

7. On May 18, 2022, the Tenth Circuit court granted the Parties' joint motion for limited remand and abatement of the appeals in light of the Parties' pending settlement. (ECF 268).

8. Huddleston submitted his unopposed motion for preliminary approval of the settlement on June 17, 2022 (ECF 269), which was subsequently granted on June 21, 2022 (ECF 270).

9. The Court has yet to set a Final Approval and Fairness Hearing. The Court-approved notice of settlement, requires a final approval hearing date, and has yet to be disseminated to class members pursuant to the Court's order granting preliminary approval of the settlement.

10. Huddleston is prepared to file his unopposed motions for final approval of the settlement and for attorneys' fees and costs and service award by October 7, 2022. JCT will not oppose Huddleston's motions pursuant to the Settlement.

11. The Parties respectfully request that the Court set a Final Approval and Fairness Hearing on October 21, 2022, or at the Court's earliest convenience thereafter.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.

Dated: June 29, 2022

Respectfully submitted,

/s/ Michelle S. Lim

Carolyn Hunt Cottrell, *admitted pro hac vice*
ccottrell@schneiderwallace.com

David C. Leimbach, *admitted pro hac vice*
dleimbach@schneiderwallace.com

Ori Edelstein, *admitted pro hac vice*
oedelstein@schneiderwallace.com

Michelle S. Lim, *admitted pro hac vice*
mlim@schneiderwallace.com

SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
P: 415-421-7100
F: 415-421-7105

and

Michael J. Blaschke (OBA 868)
mblaschke@thelawgroupokc.com
MICHAEL J. BLASCHKE, P.C.
Rachel Lawrence Mor (OBA 11400)
rmor@thelawgroupokc.com
Rachel Lawrence Mor, P.C.
3037 N.W. 63rd Street, Suite 205
Oklahoma City, Oklahoma 73116
P: 405-562-7771
F: 405-285-9350

and

Robert S. Boulter, *admitted pro hac vice*
rsb@boulter-law.com
LAW OFFICES OF ROBERT S. BOULTER
1101 Fifth Avenue
San Rafael, California 94901-1828
P: 415-233-7100
F: 415-460-1099

Attorneys for Plaintiff, Thomas Huddleston

Dated: June 29, 2022

Respectfully submitted,

/s/ Angela S. Cash

Angela S. Cash, *admitted pro hac vice*

acash@scopelitis.com

Christopher J. Eckhart, *admitted pro hac vice*

ceckhart@scopelitis.com

Karen B. Reisinger, *admitted pro hac vice*

kreisinger@scopelitis.com

Paul D. Root, *admitted pro hac vice*

proot@scopelitis.com

Scopelitis, Garvin, Light, Hanson & Feary, P.C

10 West Market Street, Suite 1400

Indianapolis, IN 46204

P: 317-637-1777

F: 317-687-2414

and

Bobby L. Latham, Jr.

blatham@lswl-law.com

James L. Colvin

jcolvin@lswl-law.com

Latham Wagner Steele Lehman

10441 S. Regal Boulevard, Suite 200

Tulsa, OK 74133

P: 918-970-2000

F: 918-970-2002

**Attorneys for Defendant,
John Christner Trucking, LLC**

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the for the United States District Court, Northern District of Oklahoma, by using the Court's Case Management/Electronic Case Filing (CM/ECF) system, on June 29, 2022.

I hereby attest that concurrence in the content of the attached document and authorization to file the attached document has been obtained from the other signatory indicated by a conformed signature (/s/) within the attached e-filed document.

Dated: June 29, 2022

Respectfully submitted,

/s/ Michelle S. Lim
Michelle S. Lim (admitted *pro hac vice*)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
mlim@schneiderwallace.com