

1 DAVID G. SPIVAK (SBN 179684)  
david@spivaklaw.com

2 THE SPIVAK LAW FIRM  
3 16530 Ventura Blvd., Ste 203  
4 Encino, CA 91436  
5 Telephone (818) 582-3086  
6 Facsimile (818) 582-2561

7 WALTER HAINES (SBN 71075)  
8 whaines@uelglaw.com  
9 UNITED EMPLOYEES LAW GROUP  
10 5500 Bolsa Ave., Suite 201  
11 Huntington Beach, CA 92649  
12 Telephone (562) 256-1047  
13 Facsimile (562) 256-1006

14 Attorneys for Plaintiff,  
15 GEORGE SWAIN, and all others similarly situated

16 (Additional Counsel Listed On Next Page)

17 **IN THE SUPERIOR COURT OF CALIFORNIA**  
18 **FOR THE COUNTY OF MERCED**

19 GEORGE SWAIN, on behalf of himself and  
20 all others similarly situated, and as an  
21 “aggrieved employee” on behalf of other  
22 “aggrieved employees” under the Labor Code  
23 Private Attorneys General Act of 2004,

24 *Plaintiff(s),*

25 vs.

26 DIRECT DAIRY TRANSPORT, LLC, a  
27 California limited liability company; BRAD  
28 NYMAN, an individual; and DOES 1-50,  
inclusive,

*Defendant(s).*

Case No.: 19CV-00913

**STIPULATION OF CLASS ACTION  
SETTLEMENT AND RELEASE**

Judge: Brian McCabe

Dept. 8

**ATTORNEYS FOR DEFENDANTS**

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STACY L. HENDERSON (SBN 222216)  
[shenderson@thtlaw.com](mailto:shenderson@thtlaw.com)

TERPSTRA HENDERSON, A PROFESSIONAL CORPORATION  
578 N. Wilma Ave., Ste. A  
Ripon, CA 95366  
Telephone (209) 599-5003  
Facsimile (209) 599-5008

Attorneys for Defendants,  
DIRECT DAIRY TRANSPORT, LLC, a California corporation, and BRAD NYMAN, an  
individual

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**SETTLEMENT AGREEMENT**

This Stipulation of Class Action Settlement and Release (the “Settlement”) is made by and between Plaintiff George Swain (“Swain”) and Defendants Direct Dairy Transport, LLC, a California corporation, and Brad Nyman, an individual (collectively “Defendants”).

**NATURE OF THE CASE AND THE PARTIES’ SETTLEMENT**

1. The Parties and Class Counsel. Plaintiff and Defendants are collectively referred to herein as “the Parties.” “Class Counsel” refers to David Spivak of The Spivak Law Firm and Walter Haines of the United Employees Law Group.

2. The Class Action. On June 20, 2018, Swain notified the LWDA and Defendants of the facts and theories supporting his claims. Plaintiff filed a putative class action lawsuit in Merced Superior Court on February 28, 2019. Defendants have not filed an answer to Plaintiff’s complaint, as the Parties have focused their efforts on settlement negotiations since commencement of the lawsuit. Plaintiff’s complaint presents the following causes of action: (1) Failure to provide meal and rest periods; (2) Failure to pay all wages earned for all hours worked; (3) Wage statement penalties; (4) Waiting time penalties; (5) Unfair competition; and (6) Civil penalties. Plaintiff’s lawsuit is referred to as “the Action.” In the Action, Plaintiff alleges various wage and hour violations and seeks recovery on behalf of himself and all California-based persons, including California residents, Defendants employed or contracted with as local drivers, long haul drivers, over-the road (“OTR”) drivers, dispatchers, and comparable positions at any time during the period of August 16, 2014 and ending on the date that final judgment is entered in this action.

3. Class Period. For purposes of this Settlement, the “Class Period” shall mean August 16, 2014 through the date the Court grants preliminary approval of this Settlement. “Class Members” (collectively referred to as the “Class”) shall mean all California-based persons, including California residents, Defendants employed or contracted with as local drivers, long haul drivers, over-the road (“OTR”) drivers, dispatchers, and comparable positions at any time during the Class Period. The Class excludes Brad Nyman and all other employees of Direct Dairy Transport, LLC for time periods in the Class Period that employees were

1 members of Direct Dairy Transport, LLC management.

2 4. Plaintiff and His Claims. As set forth in the Action, Plaintiff alleges Defendants  
3 failed to pay for all hours worked at the correct rates of pay; failed to provide lawful meal or  
4 rest breaks or pay required premiums; failed to timely pay all wages owed during employment  
5 or upon termination; failed to provide lawful itemized wage statements; failed to maintain  
6 proper employment records; and by so doing all of the above, engaged in unfair competition.  
7 Plaintiff has claimed, and continues to claim, that his contentions have merit and give rise to  
8 Defendants' liability.

9 (a) Plaintiff has considered the expense and length of continued proceedings  
10 necessary to litigate the Action against Defendants through trial and any possible appeals, and  
11 the risk and uncertainty of any recovery against Defendants. Plaintiff has also taken into account  
12 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays  
13 inherent in such litigation, including those involved in seeking class certification. Plaintiff is  
14 also aware of the burdens of proof necessary to establish liability for the claims asserted in the  
15 Action, Defendants' defenses thereto, and the difficulties in establishing the damages and  
16 penalties claimed. Based on the foregoing, the advice of Plaintiff's counsel, a full day of intense  
17 negotiations before an experienced and well-regarded mediator, and the substantial benefits to  
18 the Class and the State of California, Plaintiff has determined that the terms set forth in this  
19 Settlement are fair, adequate, and reasonable and in the best interests of the Class.

20 (b) Nothing in this Settlement, the documents referenced in this Settlement,  
21 or any action taken to carry out this Settlement is, may be construed as, or may be used as, an  
22 admission by or against Plaintiff as to the merits or lack thereof of the claims they asserted.

23 5. Denial of Wrongdoing. Defendants deny all of the claims, contentions, each and  
24 every allegation made by Plaintiff in the Action, including any allegation that class certification  
25 is warranted or proper or that they are liable on the merits on any of Plaintiff's claims in the  
26 Action. In addition, nothing herein shall be deemed to waive any of Defendants' objections or  
27 defenses to class certification or any other issue relating to or arising from the allegations set  
28 forth in the Action. Defendants deny that, for any purpose other than settlement, the Action is

1 appropriate for class or representative treatment.

2 (a) With respect to Plaintiff's claims, Defendants contend, *inter alia*, that at  
3 all times relevant to the Action they met or exceeded their obligations under the California Labor  
4 Code, the Fair Labor Standards Act, the California Business and Professions Code, and all other  
5 laws, statutes, orders or regulations alleged in the Action and/or which otherwise govern  
6 Defendants' operation. Defendants' counsel performed a thorough analysis of the law and facts  
7 relating to the claims asserted by Plaintiff in the Action. Defendants have entered into this  
8 Settlement with the intention to avoid further disputes and the expense and inconvenience of  
9 continued litigation.

10 (b) Nothing in this Settlement, the documents referenced in this Settlement,  
11 or any action taken to carry out this Settlement is, may be construed as, or may be used as, an  
12 admission, concession or other indication by or against Defendants of any fault, wrongdoing, or  
13 liability whatsoever.

14 6. The Settlement Negotiations. Beginning in August of 2018, the Parties engaged  
15 in good faith, arms' length settlement discussions. This Settlement was reached after substantial  
16 exchanges of data, information and documents before and during the mediation, and is a result  
17 of extensive arms-length negotiations. Defendants agree not to oppose Plaintiff's representation  
18 to the Court that that this Settlement is a fair, adequate, and reasonable resolution of the Action,  
19 taking into account all relevant factors, present and potential.

20 7. The Settlement Class. The "Settlement Class Members" (collectively referred to  
21 as the "Settlement Class") shall mean those Class Members who do not timely and validly  
22 exclude themselves from the Settlement in accordance with the requirements set forth herein.

23 8. Investigation. The Parties conducted significant investigation of the facts and law  
24 applicable to the Action, including, *inter alia*, extensive review and analysis of voluminous  
25 documents including Defendants' employment policies, and procedures, interviews of potential  
26 witnesses, data analysis including records of time worked and work performed by counsel and  
27 experts, conferences between counsel, and have diligently pursued investigation of claims  
28 alleged against Defendants. Counsel for the Parties have further investigated the applicable law

1 as applied to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the  
2 damages and penalties claimed by Plaintiff in the Action, and exchanged extensive data,  
3 documents and information regarding the claims while negotiating the Settlement. Based on  
4 their own independent investigation and evaluation, Plaintiff and Class Counsel believe that this  
5 Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all  
6 known facts and circumstances, including the risks of significant delay, denial of a motion for  
7 class certification, decertification, defenses asserted by Defendants, and potential appellate  
8 issues.

9 9. Cooperation. The Parties and their counsel agree to cooperate with each other  
10 and to use their best efforts to effect the implementation of this Settlement pursuant to its terms.

## 11 **II. TERMS OF SETTLEMENT**

12 10. Purpose of the Settlement. The Parties agree that this Action and any claims  
13 arising out of the dispute described in this Settlement be settled on the terms described herein  
14 as between the Settlement Class and Defendants, subject to the approval of the Court.

15 11. Stipulation for Conditional Certification of the Class. Solely for purposes of  
16 consummation and fulfillment of this Settlement, the Parties each agree to the conditional  
17 certification of the Class. However, if, for whatever reason, the Settlement does not become  
18 final, the Parties' stipulation to conditional class certification shall become null and void *ab*  
19 *initio* and this Settlement shall have no bearing on, and shall not be admissible in connection  
20 with, the issue of whether or not certification would be appropriate in the Action or in any non-  
21 settlement context. The Parties each agree the terms of the Settlement are conditioned on  
22 payment of all amounts required to be paid by Defendants under the terms of this Settlement  
23 and to the extent approved by the Court.

24 12. Application for Preliminary Approval. Counsel for Plaintiff shall request a  
25 hearing before the Court to seek preliminary approval of the Settlement on the earliest practical  
26 date. In conjunction with such hearing, Plaintiff will provide the Court with this Settlement, and  
27 any other documents necessary to implement the Settlement. Simultaneously with the filing of  
28 this Settlement, and solely for purposes of this Settlement, Counsel for Plaintiff will request that

1 the Court enter a preliminary approval order, preliminarily approving the proposed Settlement,  
2 conditionally certifying the Class and approving the Class Period for settlement purposes only,  
3 approving appointment of the Settlement Administrator, and setting a date for a final approval  
4 hearing. Defendants will not oppose these requests. The preliminary approval order shall also  
5 provide for notice of the Settlement and related matters to be disseminated to Class Members as  
6 specified herein or as may otherwise be ordered by the Court, provided that such order is also  
7 acceptable to the Parties and consistent with the terms of this Settlement.

8 13. Settlement Effective Date. The “Effective Date” of the Settlement shall be sixty-  
9 five (65) calendar days after entry of the order granting final approval, to provide for the  
10 potential appeal by a timely or untimely objector. If any appeal is taken from the Court’s  
11 overruling of any objections to the Settlement, then the Effective Date will be ten (10) calendar  
12 days after all appeals are withdrawn or after an appellate decision affirming the final approval  
13 order without modification (unless the modification is for a reduction of the Fee Award, Expense  
14 Award or Enhancement Award) becomes final. However, Defendants shall not be required to  
15 fund any portion of the Gross Settlement Fund and the Settlement Administrator (terms defined  
16 below) shall not distribute or pay any monies, unless and until all such appeals have been finally  
17 resolved or dismissed with prejudice.

18 14. Gross Settlement Fund. Provided this Settlement is finally approved by the  
19 Court, and in consideration for the general release of all claims (as described more fully in  
20 Section V, below), Defendants agree to pay an amount not to exceed One Hundred Thousand  
21 Dollars (\$100,000) (the “Gross Settlement Fund”), as a full and complete settlement of all claims  
22 arising from the Action. The Gross Settlement Fund is the total maximum amount Defendants  
23 shall be required to pay under this Settlement for all purposes, including, as approved by the  
24 Court, the Individual Settlement Awards, Administration Costs, Expense Award, Fee Award,  
25 Enhancement Award, PAGA Payment, and Employer Taxes (terms defined below). The Gross  
26 Settlement Fund is all-inclusive and under no circumstances will Defendants be required to pay  
27 more than the Gross Settlement Fund.

28 15. Net Settlement Fund. The “Net Settlement Fund” shall mean the funds available

1 for distribution to Participating Class Members after deducting from the Gross Settlement Fund  
2 the following, as approved by the Court: (i) Administration Costs; (ii) Expense Award; (iii) Fee  
3 Award; (iv) Enhancement Award; (v) PAGA Payment; and (vi) Employer Taxes.

4 16. Individual Settlement Awards. Each Class Member will be entitled to a *pro rata*  
5 distribution from the Net Settlement Fund as set forth herein. “Participating Class Members”  
6 shall mean those Class Members who do not exclude themselves from the Settlement.  
7 “Individual Settlement Award” shall mean the total gross amount (subject to applicable payroll  
8 taxes and withholdings) each Participating Class Member is entitled to receive from the Net  
9 Settlement Fund calculated pursuant to the formula below. Only Participating Class Members  
10 are eligible to receive Individual Settlement Awards. Any Class Members who do not exclude  
11 themselves from the Settlement in accordance with the requirements set forth in the Notice  
12 (Exhibit 1) shall be deemed Settlement Class Members and shall be bound by this Settlement  
13 and any order or judgment entered by the Court approving this Settlement. Class Members who  
14 submit timely written requests for exclusion pursuant to the Notice are not Settlement Class  
15 Members or Participating Class Members, and therefore are not entitled to any Individual  
16 Settlement Award and will not be bound by this Settlement or any order or judgment entered by  
17 the Court approving this Settlement.

18 17. Estimate of Individual Settlement Awards. The estimated payment to each Class  
19 Member shall be determined as follows. “Qualifying Pay Period” shall mean each pay period  
20 an individual worked for Defendants in a position covered by the definition of Class Member  
21 during the Class Period. The estimated Individual Settlement Award for each Class Member set  
22 forth in the Notice will be based on: (a) each Class Member’s total number of Qualifying Pay  
23 Periods; (b) divided by the aggregate number of Qualifying Pay Periods of all Class Members;  
24 (c) multiplied by the value of the Net Settlement Fund.

25 18. Calculation of Participating Class Members’ Individual Settlement Awards.  
26 Participating Class Members shall have their Individual Settlement Awards calculated as follows:  
27 (a) each Participating Class Member’s total number of Qualifying Pay Periods; (b) divided by  
28 the aggregate number of Qualifying Pay Periods of all Class Members; (c) multiplied by the value



1 of the Net Settlement Fund.

2 19. Guaranteed Payout of Net Settlement Fund. The Parties agree that the total  
3 amount actually distributed to all Participating Class Members shall equal 100% of the Net  
4 Settlement Fund (the “Guaranteed Minimum Payout”).

5 20. Deposit of Settlement Funds. Defendants shall begin to deposit, in an account  
6 created by the Settlement Administrator for disbursement as set forth below, the Gross  
7 Settlement Fund as follows. Within five (5) business days following the Effective Date, the  
8 Settlement Administrator shall provide counsel for Defendants routing instructions to wire  
9 transfer funds for deposit. Within ten (10) business days following the Final Approval Date, and  
10 on a monthly basis thereafter, Defendants shall deposit 1/20<sup>th</sup> of the Gross Settlement Fund until  
11 such time as Defendant has fully paid the Gross Settlement Fund. In the event that the Gross  
12 Settlement Fund is not fully paid as required by the Settlement within 20 months of the Final  
13 Approval Date, at Plaintiff’s option, the Settlement, Final Approval Order and Judgment will be  
14 set aside, terminated, and shall have no force or effect, and no Party to the Settlement shall be  
15 bound by any of its terms. Additionally, any order approving or enforcing the Settlement shall  
16 be vacated. The Settlement Agreement and all negotiations, statements and proceedings relating  
17 thereto shall be without prejudice to the rights of the parties to the Settlement, each of whom  
18 shall be restored to their respective positions in the lawsuit before the Settlement. Plaintiff shall  
19 notify Defendants of his exercise of this option in writing for it to be effective within (10)  
20 business days of Defendants’ failure to deliver the Gross Settlement Fund as set forth in this  
21 paragraph.

22 21. Attorneys’ Expenses. Class Counsel will apply to the Court for, and Defendants  
23 will not oppose, payment of Class Counsel’s expenses from the Gross Settlement Fund, in an  
24 amount according to proof, but not to exceed Ten Thousand Dollars (\$10,000.00) (the “Expense  
25 Award”). The Expense Award may include, but is not limited to, any costs and expenses  
26 incurred by Plaintiff in the prosecution of this action, including filing fees, travel costs, and  
27 mediation fees, as approved by the Court. If the Court approves less than the amount requested  
28 by Class Counsel, the remainder shall remain in the Net Settlement Fund for distribution to

1 Participating Class Members.

2 22. Attorneys' Fees. Class Counsel will apply to the Court for, and Defendants will  
3 not oppose, payment of attorneys' fees from the Gross Settlement Fund in an amount up to one-  
4 third of the Gross Settlement Fund, not to exceed Thirty Three Thousand Three Hundred and  
5 Thirty Three Dollars (\$33,333) (the "Fee Award"). If the Court approves less than the amount  
6 requested by Class Counsel, the remainder shall remain in the Net Settlement Fund for  
7 distribution to Participating Class Members.

8 23. Enhancement Award. Class Counsel will apply to the Court for, and Defendants  
9 will not oppose, payment of Five Thousand Dollars (\$5,000) to Plaintiff as consideration for his  
10 service to the Class as a class representative and the general release of all claims as set forth  
11 herein (the "Enhancement Award"). This amount shall be paid in addition to Plaintiff's *pro rata*  
12 share of the Net Settlement Fund as a Participating Class Member. If the Court approves less  
13 than the amount requested by Class Counsel, the remainder shall remain in the Net Settlement  
14 Fund for distribution to Participating Class Members. The Enhancement Award approved by  
15 the Court shall be paid from the Gross Settlement Fund, and shall be distributed to Plaintiff by  
16 the Settlement Administrator reported on an IRS Form 1099.

17 24. Settlement Administration Costs. The reasonable costs of settlement  
18 administration through and beyond final approval, estimated not to exceed Ten Thousand  
19 Dollars (\$10,000.00) (the "Administration Costs"), shall be paid from the Gross Settlement  
20 Fund. If the Administration Costs approved by the Court are less than the requested amount, the  
21 remainder shall remain in the Net Settlement Fund for distribution to Participating Class  
22 Members. If actual Administration Costs exceed the above estimate, then any such additional  
23 fees and costs may be paid from the Gross Settlement Fund only as approved by the Court.

24 25. PAGA Payment. The total sum of Five Thousand Dollars (\$5,000.00) from the  
25 Gross Settlement Fund is allocated to settle claims brought pursuant to the Private Attorneys  
26 General Act, California Labor Code Sections 2698 *et seq.*, as approved by the Court, which shall  
27 be distributed by the Settlement Administrator to the California Labor and Workforce  
28 Development Agency ("LWDA") and Participating Class Members as set forth herein (the

1 “PAGA Payment”). Of this amount, seventy five percent (75%) or Three Thousand Seven  
2 Hundred and Fifty Dollars (\$3,750.00) shall be distributed to the LWDA. The remaining twenty-  
3 five percent (25%) shall be allocated to the Class and paid *pro rata* to Participating Class  
4 Members on a Qualifying Pay Period basis, based on the same allocation method as set forth  
5 above in paragraph 18 above. Because the PAGA Payment is in the nature of a penalty pursuant  
6 to Labor Code section 2699(i), these payments shall not be subject to withholding.

7       26.     Allocation of Wages, Interest, and Penalties. The Parties agree that one third of  
8 each Individual Settlement Award is allocated to wages, subject to all applicable wage laws,  
9 including federal, state and local tax withholding and payroll taxes, reported on Form W-2. The  
10 remaining portion of each Individual Settlement Award shall be allocated to interest, represents  
11 penalties and other non-wage damages sought in the Action. Payments allocated to penalties,  
12 non-wage damages and interest shall not be subject to withholding, and will be reported on Form  
13 1099. The Settlement Administrator shall be responsible for issuing all payments and calculating  
14 and withholding any required federal, state and local taxes. The Parties recognize and agree that  
15 the precise amounts of compensation claimed in this Action are extremely difficult to determine  
16 with any certainty for any given year, if at all, and may be subject to different calculations and  
17 formulas. The Parties agree that the formula for allocating the Individual Settlement Awards to  
18 Participating Class Members provided herein is reasonable and that the payments provided  
19 herein are designed to provide a fair settlement to such persons, in light of the uncertainties  
20 regarding the calculation of alleged compensation to each Participating Class Member.

21       27.     Taxes. All payroll taxes will be computed by the Settlement Administrator based  
22 on the amounts actually claimed by Participating Class Members allocated to wages, as set forth  
23 herein. “Employer Taxes” shall mean Defendants’ share of applicable payroll taxes, such as  
24 FICA and FUTA, for that portion of the Individual Settlement Awards attributed to wages. The  
25 Settlement Administrator shall, on behalf of Defendants, timely and properly pay the Employer  
26 Taxes Defendants owe as a result of the Individual Settlement Awards to Participating Class  
27 Members from the Gross Settlement Fund. “Employee Taxes” shall mean Participating Class  
28 Members’ share of all applicable payroll taxes and withholdings. The Settlement Administrator

1 shall timely and properly withhold from the Individual Settlement Awards payable to  
2 Participating Class Members all applicable Employee Taxes. Payments to Participating Class  
3 Members and Plaintiff pursuant to this Settlement shall be reported by the Settlement  
4 Administrator on IRS Forms W-2 (for payments representing wages) or 1099 (for all other  
5 payments), and provided to the respective Participating Class Members and governmental  
6 authorities as required by law. The Settlement Administrator shall issue all reports required by  
7 federal, state, and local tax agencies to document all payments made pursuant to this Settlement.  
8 Notwithstanding the withholding of Employee Taxes, each Participating Class Member shall be  
9 responsible for paying all applicable state, local, and federal income taxes, interest or penalties  
10 arising from any payment received pursuant to this Settlement. Should any taxing authority or  
11 agency challenge the allocation of Individual Settlement Awards and/or Employee Taxes,  
12 Participating Class Members shall cooperate with Defendants and provide documentation as  
13 requested to demonstrate such payment and the appropriateness of any withholding.  
14 Participating Class Members who receive an Individual Settlement Award agree to indemnify  
15 and hold Defendants and the Released Parties harmless from any and all liability which may  
16 hereafter be asserted against them by any federal, state or local agency for any taxes claimed in  
17 connection with any payments received pursuant to this Settlement together with interest and  
18 penalties thereon. Neither Plaintiff's counsel nor Defendants' Counsel intend anything  
19 contained herein (including the Notice Packet) to constitute legal advice regarding the taxability  
20 of any amount paid hereunder, nor shall it be relied upon as such. The tax issues for each  
21 Participating Class Member are unique, and each Participating Class Member is advised to  
22 obtain tax advice from his or her own tax advisor with respect to any payments resulting from  
23 the Individual Settlement Awards.

24       28.    No Effect on Employee Benefits. The Individual Settlement Awards available to  
25 Class Members and the Enhancement Award paid to Plaintiff shall not be deemed to be  
26 "pensionable" earnings and shall not have any effect on the eligibility for, or calculation of, any  
27 employee benefits (*e.g.*, vacations, holiday pay, leave or illness policies, retirement plans, etc.)  
28 of Plaintiff or Class Members. The Parties agree that any Individual Settlement Awards or

1 Enhancement Award paid under the terms of this Settlement do not represent any modification  
2 of Participating Class Members' previously credited hours of service or other eligibility criteria  
3 under any employee pension benefit plan or employee welfare benefit plan sponsored by  
4 Defendants. Further, any Individual Settlement Award or the Enhancement Award paid  
5 hereunder shall not be considered "compensation" in any year for purposes of determining  
6 eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare  
7 benefit plan, employee bonuses, or employee past, current, or future compensation levels. The  
8 Parties further agree that Plaintiff and all Participating Class Members will be deemed to have  
9 waived any claims or benefits under the Employee Retirement Income Security Act of 1974 (29  
10 U.S.C. § 1001, *et seq.*) premised upon any and all amounts they receive under this Settlement  
11 as part of their Released Claims under this Settlement.

12         29.     Distribution of Settlement Funds. Following the Effective Date, the Settlement  
13 Administrator shall distribute the payments provided by this Settlement as follows: Within five  
14 (5) calendar days following the deposit of the entire Gross Settlement Fund with the Settlement  
15 Administrator (as set forth in Paragraph 20), the Settlement Administrator shall distribute to the  
16 appropriate persons, as approved by the Court: the PAGA Payment, the Individual Settlement  
17 Awards, the Enhancement Award, the Expense Award, the Fee Award, and the Administration  
18 Costs.

19         30.     Uncashed Checks. Participating Class Members shall have one hundred and  
20 eighty (180) days from the date of the check's issuance to cash their Individual Settlement  
21 Payment checks. After the expiration of the 180-day period, on Defendants' behalf, the  
22 Settlement Administrator shall remit any amounts from settlement checks that remain uncashed  
23 and otherwise unclaimed (the "Residue"), to the California Unclaimed Property Fund, with an  
24 identification of the Participating Class Member to whom the funds belong.

25         31.     Waiver of Liability. No person shall have any claim against the Parties or the  
26 Settlement Administrator based on mailings, distributions, and payments made in accordance  
27 with this Settlement or any order of the Court. The Settlement Administrator is not and shall not  
28 be deemed to be an employee or agent of any Party.

1 **III. SETTLEMENT ADMINISTRATION**

2 32. Appointment of Third Party Administrator. The Parties have agreed to petition  
3 the Court for appointment of CPT Group, Inc. to administer the Settlement of the Action under  
4 the terms of this Settlement (the “Settlement Administrator”). The Settlement Administrator  
5 shall be responsible for:

6 (a) Mailing the Notice Packet in English and Spanish to the Class Members  
7 as directed by the Court;

8 (b) Consulting with counsel for the Parties concerning any relevant issue,  
9 including (without limitation) the estimated amounts of approximate Individual Settlement  
10 Awards, and the acceptance of any late or deficient Notices;

11 (c) Keeping track of timely and proper requests for exclusion;

12 (d) Notifying counsel for the Parties in writing of the number of valid Claims,  
13 deficient Claims, and late Claims on a regularly weekly basis;

14 (e) Calculation and distribution of Individual Settlement Awards and PAGA  
15 Payments to each Participating Class Member and the California Labor and Workforce  
16 Development Agency;

17 (f) Providing weekly status reports to counsel for the Parties, including: (i)  
18 the number of Notice Packets mailed; (ii) the number of valid Notices received; (iii) the number  
19 of objections received; (iv) the number of requests for exclusion received; and (v) the aggregate  
20 amount of Individual Settlement Awards claimed by Participating Class Members;

21 (g) No later than ten (10) business days before the final approval hearing  
22 preparing and serving on counsel for the Parties, for filing with the Court in support of Plaintiff’s  
23 motion for final approval, a declaration of due diligence setting forth its compliance with its  
24 obligations under this Settlement;

25 (h) Notifying Counsel for Defendants within five (5) business days after the  
26 Effective Date of the wiring instructions for the Deposit of Settlement Funds as approved by the  
27 Court, which shall be paid by Defendants to the Settlement Administrator within ten (10)  
28 business days from the date of such notification or within ten (10) business days of the Effective

1 Date, whichever is later;

2 (i) Distributing and reporting the Individual Settlement Awards, PAGA  
3 Payment, Enhancement Award, Fee Award, Expense Award, Administration Costs, and  
4 Employer Taxes, as may be ordered by the Court or as otherwise necessary;

5 (j) Issuing a W-2 Form to each Participating Class Member for the wage  
6 portion of each Individual Settlement Award, a 1099 Form to each Participating Class Member  
7 for the interest, penalties, and non-wage portion of each Individual Settlement Award, including  
8 PAGA Payments, a 1099 Form to Plaintiff for the Enhancement Award, a 1099 Form to Class  
9 Counsel for the Fee Award and Expense Award, and a 1099 Form to the Settlement  
10 Administrator for the Administration Costs; and

11 (k) Such other tasks as the Parties mutually agree or the Court orders the  
12 Settlement Administrator to perform, including responding to questions from Class Members

13 33. Resolution of Disputes. All disputes relating to the Settlement Administrator's  
14 duties may be referred to the Court, if necessary, which will have continuing jurisdiction over  
15 this Settlement until all obligations contemplated by this Settlement have been fully carried out.

16 **IV. NOTICE TO THE CLASS**

17 34. Class List. Within ten (10) business days following the date of preliminary  
18 approval, Defendants will provide the Settlement Administrator with the names, most recent  
19 known mailing address, telephone number, and social security number of each Class Member,  
20 dates of employment and the total number of Qualifying Pay Periods of each Class Member  
21 during the Class Period (collectively the "Class List"). Each Class Member's total Qualifying  
22 Pay Periods will be derived from Defendants' records. The Class List will be treated as  
23 confidential by the Settlement Administrator and will not be disclosed by the Settlement  
24 Administrator to anyone, except as may be required to applicable tax authorities, pursuant to the  
25 express written consent of Defendants, by order of the Court, or as may be necessary to carry  
26 out the reasonable steps described in this Settlement to locate missing Class Members. In no  
27 event will the Settlement Administrator provide the Class List to Class Counsel unless  
28 specifically authorized by Defense Counsel.

1           35.    Notice of Settlement: Within thirty (30) calendar days after preliminary approval,  
2 the Settlement Administrator shall mail a copy of the Notice Packet in English and Spanish, in  
3 the form approved by the Court in its preliminary approval order, to all persons shown by  
4 Defendants' records to be Class Members, *via* first class U.S. mail, using the most current  
5 mailing address available. The Notice Packet shall state the total approximate amount each Class  
6 Member is estimated to be entitled to receive as his or her Individual Settlement Award under  
7 the Settlement as set forth above in paragraph 17. Any Notice Packets returned to the Settlement  
8 Administrator as undelivered and bearing a forwarding address shall be re-mailed by the  
9 Settlement Administrator within three days following receipt of the returned mail. For any  
10 Notice Packets returned to the Settlement Administrator without a forwarding address, the  
11 Settlement Administrator shall first conduct a National Change of Address search as required  
12 for undeliverable notices, followed by a computer/SSN and "skip trace" search to obtain an  
13 updated address, and shall promptly re-mail the Notice Packets to any newly-found address or  
14 addresses. The re-mailed Notice Packet shall be identical to the original Notice Packet. The time  
15 period to request exclusion or object shall not be extended on account of a returned or  
16 undeliverable Notice Packet. The Settlement Administrator and counsel for the Parties shall  
17 undertake all reasonable efforts to locate and verify the addresses of Class Members and send a  
18 copy of the Notice Packet to all Class Members. Any costs incurred by having the Settlement  
19 Administrator handle these administrative tasks shall be included in the Administration Costs  
20 approved by the Court. In the event that the Court does not grant final approval of the Settlement,  
21 the Parties agree to split 50% of all costs incurred by the Settlement Administrator.

22           36.    Class Member Disputes. If a Class Member disputes the number of Qualifying  
23 Pay Periods listed on the Notice, the Class Member may produce evidence to the Settlement  
24 Administrator indicating the Pay Periods the Class Member contends were actually worked  
25 during the Class Period. All challenges must be postmarked no later than the last day of the  
26 Objection/Exclusion Period. The Settlement Administrator may reject any challenge not  
27 supported by such evidence. If a dispute arises over the number of Qualifying Pay Periods listed  
28 in the Notice based on evidence produced by a Class Member, Defendants will be asked to



1 manually review their payroll and personnel records to verify the correct number of Qualifying  
2 Pay Periods. The records of Defendants shall have a rebuttable presumption of correctness and  
3 will be presumed determinative. The Settlement Administrator's determination shall be final  
4 and binding. The Court will not review any such disputes.

5 37. Deficiency Notice. The Settlement Administrator shall send a Deficiency Notice  
6 to Class Members for any irregularities in their completed Notices, which will provide the Class  
7 Members with no more than fifteen (15) calendar days from the date of mailing the Deficiency  
8 Notice to cure the deficiency, even if after the Objection/Exclusion Period. This 15-day period  
9 shall not be extended or waived by the Settlement Administrator unless mutually agreed to in  
10 writing by the Parties or as ordered by the Court.

11 38. Procedure for Objecting or Requesting Exclusion. The Parties agree that Plaintiff  
12 may not opt out of the Settlement Class or file an objection to the Settlement, but that any other  
13 Class Member or person(s) purporting to act on behalf of Class Members who wish to object to  
14 the Settlement, or to be excluded from the Settlement must submit timely written objections  
15 and/or requests for exclusion using the following procedures:

16 (a) The Notice shall provide that any Class Member(s) and person(s)  
17 purporting to act on behalf of any Class Member(s) who wish to object to the Settlement may  
18 file with the Settlement Administrator a written statement objecting to the Settlement not later  
19 than sixty (60) calendar days from the date the Notice Packet is mailed by the Settlement  
20 Administrator (the Objection/Exclusion Period).

21 (b) A Class Member who fails to file a written objection in the manner  
22 specified above may be deemed to have waived any objections and may be foreclosed from  
23 making any objection to the Settlement, whether by appeal or otherwise.

24 (c) The Notice shall also provide that Class Members who wish to exclude  
25 themselves from the Settlement must deliver to the Settlement Administrator not later than sixty  
26 (60) calendar days from the date the Notice Packet is mailed by the Settlement Administrator a  
27 written statement requesting exclusion from the Settlement Class. Such written request for  
28 exclusion should contain the name, address, and telephone number of the person requesting

1 exclusion, and state, in effect, the following: I WISH TO BE EXCLUDED (OPT OUT) FROM  
2 THE SETTLEMENT IN THE CLASS ACTION LAWSUIT AGAINST DEFENDANTS I  
3 UNDERSTAND BY REQUESTING EXCLUSION (OPTING OUT) FROM THE  
4 SETTLEMENT, I WILL NOT RECEIVE ANY SETTLEMENT PROCEEDS. The Settlement  
5 Administrator shall provide Defendants' Counsel the names of individuals who make timely  
6 requests for exclusion.

7 (d) Class Members who submit a timely request for exclusion will not  
8 receive a *pro rata* distribution from the Net Settlement Fund. No request for exclusion will be  
9 accepted by the Settlement Administrator if postmarked after the last day of the  
10 Objection/Exclusion Period.

11 (e) Class Members who fail to submit a timely request for exclusion in the  
12 manner described herein shall be bound by all terms of the Settlement and final approval order.

13 (f) If any Class Member who timely submits an objection, as determined by  
14 the Court, files a notice of appeal of the final approval order within the time period permitted  
15 by law, Defendants shall not be required to fund any portion of the Gross Settlement Fund, and  
16 the Settlement Administrator shall not distribute or pay any monies, until any such appeal(s)  
17 affirm the Settlement without modification (unless the modification only relates to a reduction  
18 of the Fee Award, Expense Award or Enhancement Award) or are dismissed with prejudice.

19 39. Reminder Notice. Thirty (30) calendar days following the initial mailing of the  
20 Notice Packet to the Class, the Settlement Administrator will mail to each Class Member who  
21 has not requested exclusion from the settlement a postcard in English and Spanish reminding  
22 them of the deadline to request exclusion from the Settlement.

23 40. No Solicitation of Class Members. The Parties agree to use their best efforts to  
24 carry out the terms of this Settlement. Neither the Parties nor their counsel or agents will contact  
25 Class Members for the purpose of attempting to influence them to participate or not to participate  
26 in this Settlement. However, if contacted by a Class Member, counsel for the Parties and  
27 representatives of Defendants may provide information or assistance regarding any aspect of the  
28 Settlement requested by the Class Member. At no time shall any of the Parties or their counsel,

1 agents, or representatives solicit or otherwise encourage Class Members or any other persons  
2 (including but not limited to the LWDA) to submit written objections to the Settlement or  
3 requests for exclusion from the Settlement, or encourage Class Members or any other person to  
4 appeal from the final approval order.

5 **V. RELEASES**

6 41. Release by the Settlement Class. As of the Effective Date, and for the duration  
7 of the Class Period, Plaintiff and all Settlement Class Members (on behalf of each of them and  
8 each of their heirs, executors, administrators, and assigns) irrevocably and unconditionally fully  
9 release and forever discharge Defendants and all of their respective former, present, and future  
10 owners, parents, spouses, subsidiaries, affiliates, divisions, related entities, joint venturers,  
11 partners, members, corporations in common control, co-employers, service providers,  
12 predecessors, successors, assigns, directors, employees, partners, shareholders, agents,  
13 associates, representatives, attorneys, insurers, and any other successors, assigns, or legal  
14 representatives of any of them (collectively the “Released Parties”), from claims alleged in the  
15 Action and any and all other claims, causes of action, demands, injuries, grievances, obligations,  
16 losses, damages, penalties, interest, fines, debts, liens, liabilities, attorneys' fees, costs, and any  
17 other form of relief or remedy in law or equity, of any type whatsoever, whether known, should  
18 have been known or unknown, foreseen, should have been foreseen or unforeseen, anticipated,  
19 should have been anticipated or unanticipated, suspected, should have been suspected or  
20 unsuspected or latent, that occurred on or before the Effective Date of the Settlement that could  
21 reasonably have been brought based on the or related to or arising out of facts alleged or any  
22 theory that could have been brought based on those facts in the Action, including without  
23 limitation, any claims under any California statute, regulation, rule or common law, or any other  
24 legal or equitable theory alleging any failure to comply with any wage and hour requirements,  
25 pay wages, overtime, travel time, and/or minimum wages for all hours worked, provide meal  
26 and rest breaks, pay premium pay for missed meal and rest breaks, pay all wages within the  
27 required time period upon discharge/termination, timely pay all wages during employment, pay  
28 all wages during employment, provide complete and accurate wage statements, keep complete

1 and accurate payroll records, as well as any and all claims for liquidated or punitive damages,  
2 statutory and civil penalties, attorneys' fees or costs and expenses associated therewith, whether  
3 at common law, pursuant to statute, ordinance or regulation, in equity or otherwise, and whether  
4 arising under federal, state or other applicable law; including, but not limited to, California  
5 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,  
6 1197, 1197.1, 1198, and 2698, *et seq.*, and Business and Professions Code section 17200, *et*  
7 *seq.*, and any applicable IWC Wage Orders (“the Released Claims”). Released Claims also  
8 includes any claim against Defendants for attorneys' fees or costs/expenses associated with  
9 Class Counsel's representation of the Plaintiff and Class.

10 42. Additional General Release of All Claims by Plaintiff. As of the Effective Date,  
11 and for the duration of the Class Period, in addition to the Released Claims, Plaintiff (on his  
12 own behalf and on behalf of his heirs, executors, administrators, and assigns) knowingly and  
13 voluntarily releases and forever discharges the Released Parties from any and all claims, known  
14 and unknown, asserted and unasserted, suspected or unsuspected, foreseen or unforeseen,  
15 anticipated or unanticipated, that he has or may have had against Defendants or any of the  
16 Released Parties. Such claims include, but are not limited to: breaches of contract, whether  
17 written, oral or implied; violations of any public policy; tort claims, including, but not limited  
18 to intentional infliction of emotional distress and negligent infliction of emotional distress,  
19 defamation, misrepresentation, and fraud; retaliation claims; common law claims; any other  
20 claims for damages, costs, fees, or other expenses, including attorneys’ fees; and any violations  
21 of the following statutes, laws, and regulations: Title VII of the Civil Rights Act of 1964, as  
22 amended; The Civil Rights Act of 1991; Sections 1981 through 1988 of Title 42 of the United  
23 States Code, as amended; The Americans with Disabilities Act of 1990, as amended; The Age  
24 Discrimination in Employment Act of 1967, as amended; the Older Workers Benefit Protection  
25 Act; the Employment Retirement Income Security Act of 1974, as amended; the Occupational  
26 Safety and Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Family and Medical  
27 Leave Act of 1993, as amended; the Fair Labor Standards Act; the California Fair Employment  
28 and Housing Act – Cal. Gov’t Code § 12900, *et seq.*; the California Family Rights Act – Cal.

1 Govt. Code §12945.2 *et seq.*; the California Unruh Civil Rights Act – Cal. Civ. Code § 51, *et*  
2 *seq.*; the California Whistleblower Protection Law – Cal. Lab. Code §1102-5(a) to (c); the  
3 California Occupational Safety and Health Act, as amended, Cal. Labor Code § 6300, *et seq.*,  
4 and any applicable regulations thereunder; the California Labor Code; the Private Attorneys  
5 General Act of 2004 – Cal. Lab. Code §§ 2698, *et seq.*; the Equal Pay Act of 1963; the  
6 Consolidated Omnibus Budget Reconciliation Act of 1985; California Labor Code § 132a;  
7 California Business and Professions Code §§ 17200 *et seq.*; the California Civil Code; and any  
8 other federal, state, or local civil employment law, statute, regulation, or ordinance capable of  
9 being released by Plaintiff, excluding any claims that cannot be released as a matter of law.

10 43. California Civil Code section 1542. To effect a full and complete general release  
11 as described above, Plaintiff and each Settlement Class Member expressly waives and  
12 relinquishes all rights and benefits of California Civil Code section 1542, and does so  
13 understanding and acknowledging the significance and consequence of specifically waiving  
14 rights under Civil Code section 1542, which states as follows:

15 **A general release does not extend to claims which the creditor**  
16 **or releasing party does not know or suspect to exist in his or**  
17 **her favor at the time of executing the release, which if known**  
18 **by him or her must have materially affected his or her**  
**settlement with the debtor or released party.**

19 However:

20 **The Parties expressly exclude from the scope of this release**  
21 **(except with respect to Plaintiff, who waives all claims) any**  
22 **claims Settlement Class Members have that do not fall within**  
23 **the definition of Released Claims, or are otherwise prohibited**  
**from being waived under law.**

24 Thus, notwithstanding the provisions of Civil Code section 1542, and to implement a  
25 full and complete release and discharge, Plaintiff and each Settlement Class Member expressly  
26 acknowledges this Settlement is intended to include in their effect, without limitation, all known  
27 and unknown claims, including any claims that he/she does not know or suspect to exist in his  
28 favor against the Released Parties as of the Effective Date, and that this Settlement contemplates

1 the extinguishment of any such claim or claims. Plaintiff and each Settlement Class Member  
2 acknowledges he/she may later discover facts different from or in addition to those he now  
3 knows or believes to be true regarding the matters released or described in this Settlement, and  
4 nonetheless agrees that the releases and agreements contained in this Settlement shall remain  
5 fully effective in all respects notwithstanding any later discovery of any different or additional  
6 facts. Plaintiff and each Settlement Class Member assumes any and all risks of any mistake in  
7 connection with the true facts involved in the matters, disputes, or controversies described in  
8 this Settlement or with regard to any facts now unknown to Plaintiff and each Settlement Class  
9 Member relating to those matters.

10 **VI. JUDICIAL APPROVALS**

11 44. Duties of Parties Prior to Preliminary Approval. Plaintiff shall request a hearing  
12 before the Court to seek preliminary approval of the Settlement on the earliest practical date  
13 following execution of this Settlement. In conjunction with such hearing, Plaintiff will provide  
14 the Court with this Settlement, and any other documents necessary to implement the Settlement.  
15 Simultaneously with the filing of this Settlement, and solely for purposes of this Settlement,  
16 Plaintiff will request that the Court enter a Preliminary Approval Order (substantially in the  
17 form attached hereto as Exhibit 2) for the purpose of:

- 18 (a) Preliminarily approving the proposed Settlement;
- 19 (b) Provisionally certifying the Class and approving the Class Period for  
20 settlement purposes only;
- 21 (c) Approving The Spivak Law Firm and United Employees Law Group to  
22 serve as Class Counsel and Plaintiff George Swain as Class  
23 Representative;
- 24 (d) Providing Notice of the Settlement and related matters, including the  
25 Notice, to be disseminated to Class Members as specified herein or as  
26 may otherwise be ordered by the Court, provided that such order is also  
27 acceptable to the Parties and consistent with the terms of this Settlement;  
28 and

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(e) Scheduling a final approval hearing.

Defendants will not oppose these requests so long as they are consistent with this Settlement Agreement.

45. Duties of Parties Following Preliminary Approval. Following preliminary approval, notice to the Class and an opportunity for objection, a final approval hearing shall be held on a date set by the Court. In connection with the final approval hearing, the Parties shall file such papers with the Court as either their counsel or the Court may determine to be necessary. Plaintiff's counsel shall file proof of notice to the Class before the final approval hearing and will submit a proposed final approval order and judgment for review by the Court (substantially in the form attached hereto as Exhibit 4) for the purpose of:

- (a) Approving the settlement, adjudging the terms to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for the Expense Award, the Fee Award, the Enhancement Award, the PAGA Payment, and Administration Costs as set forth herein; and
- (c) Entering a final approval order and judgment as final disposition of the Action in its entirety, intended to be immediately appealable. Upon entry of the final approval order and judgment, each and every Settlement Class Member shall be deemed to have conclusively released and forever discharged the Released Parties for any and all Released Claims, and shall be permanently barred and enjoined from the institution or prosecution of any and all Released Claims against the Released Parties, except as to such rights or claims as may be created by the Settlement. It is expressly agreed by the Parties that the Court will retain jurisdiction over the Action only: (i) to enforce the terms of this Settlement; (ii) address any settlement administration matters that may arise; and (iii) address such post-Judgment matters as may be appropriate under the Court's rules or applicable law.

1           46.    Voiding Settlement. If the Court declines to approve any material term or  
2 condition of this Settlement, then this entire Settlement shall be void and unenforceable as to all  
3 Parties herein, at the option of any Party, within thirty (30) calendar days of mailing notice of  
4 the Court's action. Further, Defendants have the option of voiding this Settlement within thirty  
5 (30) calendar days of receiving notice that the number of Settlement Class Members timely  
6 completing valid requests for exclusion from the settlement (opt out) is five percent (5%) or  
7 more of all Class Members.

8           47.    If the Settlement does not become final for any reason, this Settlement shall be  
9 null and void *ab initio*, no Party shall be bound by the terms thereof, and this Settlement shall  
10 not be admissible or offered into evidence in the litigation or any other action for any purpose  
11 whatsoever, and any order or judgment entered by the Court in furtherance of this Settlement  
12 shall be treated as withdrawn or vacated by stipulation of the Parties. In such case, the Parties  
13 shall be returned to their respective positions as of the date immediately prior to the execution  
14 of this Settlement, and the Parties shall proceed in all respects as if this Settlement had not been  
15 executed, and Defendants shall have no obligation to make any payments to Plaintiff, Counsel  
16 for Plaintiff, the LWDA, the Settlement Administrator or any Class Member. Notwithstanding  
17 the foregoing, an appeal of, a modification of, a reversal on appeal, or the reduction of any Fee  
18 Award and Expense Award or Enhancement Award shall not constitute grounds for cancellation  
19 and termination of this Settlement.

20 **VII. MISCELLANEOUS PROVISIONS**

21           48.    Voluntary Nature. The Parties acknowledge they have entered into this  
22 Settlement voluntarily, on the basis of their own judgment and without coercion, duress, or  
23 undue influence of any Party, and not in reliance on any promises, representations, or statements  
24 made by the other Parties other than those contained in this Settlement. Each of the Parties hereto  
25 expressly waives any right he/it might ever have to claim that this Settlement was in any way  
26 induced by fraud.

27           49.    Informed Consent. Prior to execution of this Settlement, each Party has read this  
28 entire Settlement and been given the opportunity to consult with independent counsel of their



1 choosing and to have such independent counsel advise as to the meaning of this Settlement and  
2 its legal effect.

3 50. Authority. The signatories hereby represent that they are fully authorized to enter  
4 into this Settlement and to bind the Parties hereto to the terms and conditions hereof.

5 51. Cooperation. The Parties agree to fully cooperate with each other to accomplish  
6 the terms of this Settlement, including but not limited to, execution of such documents and to  
7 take such other action as may reasonably be necessary to implement the terms of this Settlement.  
8 The Parties shall use their reasonably best efforts, including all efforts contemplated by this  
9 Settlement and any other efforts that may become necessary by order of the Court, or otherwise,  
10 to effectuate this Settlement and the terms set forth herein.

11 52. No Admissions. Nothing contained herein is to be construed or deemed an  
12 admission of liability on the part of Defendants. Defendants deny any liability or wrongdoing  
13 of any kind associated with the claims alleged by Plaintiff, and further contend that, for any  
14 purpose other than settlement, this Action is not appropriate for class treatment. Defendants  
15 contend, among other things, that they complied at all times with all applicable state and federal  
16 laws, rules, regulations and orders. Plaintiff believes he filed a meritorious action, and that the  
17 requisites for class certification can be satisfied in this case. Each Party hereto has entered into  
18 this Settlement with the intention to avoid further disputes and the expense and inconvenience  
19 of continued litigation.

20 53. Publicity. The Parties and their counsel agree that they will not, unless required  
21 by law, issue any press releases or have any communications with the press concerning this  
22 litigation, one another, and/or Defendants' business practices. Plaintiff and Plaintiff's counsel  
23 will not publicize the Settlement and will not communicate the terms of the Settlement to any  
24 other person outside the Action, including members of the press, news media, etc. (including  
25 organizations that publicize verdicts and settlements). Plaintiff and Class Counsel further agree  
26 that they shall not promote, or publicize the Settlement with anyone other than the Court, and in  
27 particular agree that they will not issue any press releases, engage in any communications, or  
28 take any other action that would provide the press or media or any litigation reporting service

1 with information about this Action or the Settlement, or otherwise enable or allow the press or  
2 other media or any litigation reporting service to learn or obtain such information. Plaintiff and  
3 Plaintiff's counsel further agree that if contacted regarding this case, they will state only that the  
4 matter is resolved. Nothing herein shall be interpreted as preventing any good-faith  
5 communications by any Counsel for the Parties and/or any Parties with the Court, Class  
6 Members, or the Settlement Administrator for the sole purpose of facilitating the Settlement of  
7 the Action.

8       54.    Construction. The Parties agree that this Settlement is the result of lengthy,  
9 intensive arms-length negotiations between the Parties and that this Settlement shall not be  
10 construed in favor of or against any Party by reason of the extent to which that Party has  
11 participated in the drafting of this Settlement.

12       55.    Captions and Interpretations. Paragraph titles or captions contained herein appear  
13 as a matter of convenience and for reference, and in no way define the scope of this Settlement  
14 or any provision hereof.

15       56.    Modifications. This Settlement may not be changed, altered, or modified, except  
16 in writing and signed by the Parties hereto as approved by the Court. This Settlement may not  
17 be discharged except by performance in accordance with its terms or by a writing signed by the  
18 Parties hereto as approved by the Court.

19       57.    Waiver. No waiver of any of the terms of this Settlement shall be valid unless in  
20 writing and signed by the Party to this Settlement against whom such waiver is sought to be  
21 enforced. The waiver by any Party to any provision of this Settlement shall not operate or be  
22 construed as a waiver of any subsequent breach by any Party, nor shall any waiver operate or be  
23 construed as a rescission of this Settlement.

24       58.    Integration. This Settlement and its Exhibits constitute the entire Settlement of  
25 the Parties with respect to the matters discussed herein, and no oral or written representations,  
26 warranties, or inducements have been made to any Party concerning this Settlement or its  
27 Exhibits other than the representations, warranties, and covenants contained and memorialized  
28 in such documents. All prior or contemporaneous negotiations, agreements, understandings, and

1 representations, whether written or oral, are expressly superseded hereby and are of no further  
2 force and effect. Each of the Parties acknowledges that it has not relied on any promise,  
3 representation, or warranty, express or implied, not contained in this Settlement.

4 59. No Prior Assignments. This Settlement shall be binding upon and inure to the  
5 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and  
6 successors. The Parties hereto represent, covenant, and warrant they have not directly or  
7 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
8 any person or entity any portion of any liability, claim, demand, action, cause of action or rights  
9 herein released and discharged except as set forth herein.

10 60. Governing Law. This Settlement is made and entered into under the laws of the  
11 State of California, and shall be interpreted, applied and enforced under those laws (including  
12 California Code of Civil Procedure section 664.6), and any litigation concerning this Settlement  
13 shall be in the Superior Court of the State of California for the County of Merced.

14 61. Execution. This Settlement may be executed in one or more counterparts, each  
15 of which shall be an original, provided that counsel for the Parties shall exchange among  
16 themselves original signed counterparts.

17 62. Signatories. The Parties agree that, because the Class Members are so numerous,  
18 it is impossible or impractical to have each Settlement Class Member execute this Settlement.  
19 Therefore, the Notice Packet will inform all Class Members of the binding nature of the releases  
20 contained in this Settlement and shall have the same force and effect as if this Settlement were  
21 executed by each Settlement Class Member.

22 IN WITNESS WHEREOF: the undersigned have duly executed this Settlement as of the  
23 date set forth below:

24  
25 Dated: 01 / 23 / 2020 \_\_\_\_\_

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

27 George Swain  
28 Plaintiff and Class Representative

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Dated: 1-21-20

By: *Brad Nyman*  
Brad Nyman, for himself and on behalf  
of Direct Dairy Transport, LLC,  
Defendants

THE SPIVAK LAW FIRM

Dated: 01 / 23 / 2020, 2020

By: *David Spivak*  
DAVID SPIVAK  
Attorneys for Plaintiff,  
DAVID SWAIN

UNITED EMPLOYEES LAW GROUP

Dated: January 24, 2020

By: *Walter Haines*  
WALTER HAINES  
Attorneys for Plaintiff,  
DAVID SWAIN

TERPSTRA HENDERSON, A PROFESSIONAL CORPORATION

Dated: 1/21, 2020

By: *Shenderson*  
STACY L. HENDERSON  
Attorneys for Defendants,  
DIRECT DAIRY TRANSPORT, LLC, and  
BRAD NYMAN