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11  
12 IN THE UNITED STATES DISTRICT COURT  
13 DISTRICT OF ARIZONA

14 Kelli Salazar, Wayne Carpenter, Rodney ) Case No.: CV19-05760-SMB  
15 Lopez, and Gregory Hanna, individually and )  
on behalf of other similarly situated ) **SETTLEMENT AGREEMENT**  
16 individuals, ) **AND RELEASE**

17 )  
Plaintiffs, )

18 v. )

19 Driver Provider Phoenix, LLC; Driver )  
20 Provider Leasing, LLC; Innovative )  
Transportation of Sedona, LLC; Innovative )  
21 Transportation Solutions of Tucson, LLC; )  
Innovative Transportation Solutions, Inc. )  
22 (Arizona); Innovative Transportation )  
23 Solutions, Inc. (Utah); Innovative )  
Transportation Solutions, LLC; Driver )  
24 Provider Management LLC; Jason Kaplan; )  
25 Kendra Kaplan; Stephen Kaplan and Barbara )  
Kaplan, husband and wife; Barry Gross and )  
26 Jane Doe Gross, husband and wife; and Does )  
1-10. )

27 )  
28 Defendants. )

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1  
2 **SETTLEMENT AGREEMENT AND RELEASE**

3 This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made by  
4 and between Plaintiffs Kelli Salazar, Wayne Carpenter, Rodney Lopez, and Gregory  
5 Hanna (collectively “Named Plaintiffs”) on and behalf of themselves and the FLSA  
6 Collective Members and Rule 23 Class Members and Defendants Driver Provider  
7 Phoenix, LLC; Driver Provider Leasing, LLC; Innovative Transportation of Sedona, LLC;  
8 Innovative Transportation Solutions of Tucson, LLC; Innovative Transportation  
9 Solutions, Inc. (Arizona); Innovative Transportation Solutions, Inc. (Utah); Innovative  
10 Transportation Solutions, LLC; Driver Provider Management LLC; Jason Kaplan; Kendra  
11 Kaplan; Stephen Kaplan and Barbara Kaplan, husband and wife; Barry Gross and Donna  
12 Gross, husband and wife; and their respective affiliates, subsidiaries, successors and  
13 assigns (collectively “Defendants”). Named Plaintiffs and Defendants are referred to  
14 herein as the “Parties.” This Agreement is a partial settlement intended to settle the  
15 Released Claims (defined below) in the above-referenced matter, Case No. 2:19-cv-  
16 05760, pending in the United States District Court for the District of Arizona (the  
17 “Lawsuit”) for a Settlement Amount of Two Million Five Hundred Thousand Dollars  
18 (\$2,500,000.00). The Settlement Amount is exclusive of Attorneys’ Fees and Costs. Class  
19 Counsel’s Attorneys’ Fees and Costs Award shall be determined by the Court upon  
20 Application for Attorneys’ Fees and Costs as set forth in this Agreement and paid by  
21 Defendants directly to Class Counsel as set forth in this Agreement.

22 **I. BACKGROUND AND RECITALS**

23 A. Unless defined elsewhere in this Agreement, the words and phrases herein  
24 have the meaning set forth in the Definitions below.

25 B. On December 6, 2019, Kellie Salazar and Wayne Carpenter filed the  
26 Lawsuit, a collective and class action complaint (Doc. 1).

27 C. On January 8, 2020, Plaintiffs filed their Second Amended Class Action and  
28 Collective Action Complaint, naming Rodney Lopez as an additional Named Plaintiff

1 (Doc. 25).

2 D. By order dated September 24, 2020, the Court dismissed the complaint for  
3 failure to state a claim and granted Plaintiffs leave to amend (Doc. 44).

4 E. Plaintiffs filed their Third Amended Class Action and Collective Action  
5 Complaint on October 13, 2020, naming Gregory Hanna as an additional Named Plaintiff  
6 (Doc. 45).

7 F. By order dated March 23, 2021 (Doc. 91), the Court conditionally certified  
8 the following class as an FLSA collective action pursuant to 29 U.S.C. § 216(b) and  
9 directed notice to be sent to potential collective action members:

10 All current and former employees of The Driver Provider who performed  
11 chauffeur services at any time during the three (3) years prior to the  
12 commencement of this lawsuit.

13 G. The Court entered a Scheduling Order on March 24, 2021 (Doc. 92).

14 H. On April 12, 2021, the Court approved a form of notice to be sent to the  
15 potential FLSA Collective Members(Doc. 96).

16 I. Plaintiffs filed a Fourth Amended Class Action and Collective Action  
17 Complaint (Doc. 114) on May 26, 2021.

18 J. On September 21, 2022, Plaintiffs filed a motion for Rule 23 class  
19 certification for certification under Count II (violation of the AWA), and Count III  
20 (violation of the AMWA) (Doc. 331).

21 K. On September 21, 2022, Defendants filed a motion for judgment on the  
22 pleadings on Plaintiff's claims for unpaid overtime under the AWA (Doc. 336).

23 L. On December 6, 2022, Plaintiffs filed a motion requesting the Court  
24 authorize supplemental FLSA conditional certification notice to be sent to Drivers who  
25 began employment with Defendants following issuance of the first notice (Doc. 388).

26 M. By order dated January 12, 2023, the Court granted Defendants' motion for  
27 judgment on the pleadings on Plaintiffs' claim for unpaid overtime under the AWA (Doc.  
28 410).

1 N. Plaintiffs filed their Fifth Amended Complaint on January 26, 2023, (Doc.  
2 413).

3 O. On January 30, 2023, the Court granted Plaintiffs' motion for Rule 23 class  
4 certification as to Plaintiffs' Count III for unpaid minimum wages under the AMWA and  
5 denied as moot Plaintiff's notion for Rule 23 class certification as to Plaintiffs' claims for  
6 unpaid overtime under the AWA (Docs 416 and 427). The Court certified the following  
7 class under Fed. R. Civ. P. 23(b)(3):

8 All current and former employees of The Driver Provider who performed  
9 chauffeur services in Arizona at any time from December 6, 2016 to the  
10 present. Excluded from the class are all owners, managers, supervisors,  
11 dispatchers, or other employees whose primary job responsibilities were not  
the provision of chauffeur services.

12 P. On August 30, 2023, the Court granted Defendants' motion for  
13 decertification and decertified the FLSA Collective (Doc. 559). The Court denied  
14 Plaintiffs' motion for supplemental FLSA notice as moot (Doc. 562).

15 Q. The Court denied Defendants' motion to decertify the Rule 23 class on  
16 October 27, 2023 (Doc. 585).

17 R. By order dated November 7, 2023, the Court granted Defendants' motion  
18 for judgment on the pleadings on Plaintiffs' claim for statutory penalties under A.R.S. §  
19 23-364(F) (Doc. 590).

20 S. On November 9, 2023, the Court entered an order on the Parties' motions  
21 for summary judgment (Doc. 593). The Court granted Plaintiffs' motion for partial  
22 summary judgment as to the applicability of the FLSA exemptions and DP's failure to pay  
23 required minimum wages and recordkeeping violations under the AMWA and DP's  
24 minimum wage and overtime violations under the FLSA. The Court granted Defendants'  
25 motion for summary judgment as to the availability of treble damages on Named  
26 Plaintiffs' straight time claims under the AWA. The Court denied both Parties' motions  
27 for summary judgment as to (1) liability for Plaintiffs' straight time claims under the  
28 AWA; (2) willfulness; and (3) good faith.

T. On November 23, 2023, the Court reconsidered its decision and vacated its

1 prior order decertifying the FLSA Collective (Doc. 604). The Court also granted  
2 Plaintiffs' request for supplemental FLSA notice to be sent to Drivers who had been hired  
3 since Plaintiffs sent the first FLSA notice (Doc. 605).

4 U. On December 18, 2023, the Court denied Plaintiffs' motion for Rule 23  
5 certification of their AWA claims for unpaid straight time (Doc. 629).

6 V. A trial in this matter was scheduled to begin on April 16, 2024. At the time  
7 of settlement, the Parties had filed and responded to motions *in limine*, (Docs. 698-703,  
8 730-732, 734-736), and had submitted to the Court a pretrial statement, (Doc. 746),  
9 proposed jury instructions, (Doc. 758), proposed verdict forms (Docs. 757, 759), and  
10 proposed voir dire (Doc. 755).

11 W. The Parties participated in an in-person mediation with mediator Hunter  
12 Hughes III on March 6, 2024. Mr. Hughes has extensive experience mediating complex  
13 wage and hour cases, including class and collective actions.

14 X. The Parties were unable to reach an agreement at the mediation, but  
15 remained engaged in settlement negotiations both with Mr. Hughes and through direct  
16 communications between counsel.

17 Y. The Parties were able to reach an agreement on March 4, 2024 and  
18 memorialized the agreement in a written term sheet on March 5, 2024.

19 Z. Class Counsel has analyzed and evaluated the impact of this Agreement on  
20 Named Plaintiffs and all Rule 23 Class Members and FLSA Collective Members. Based  
21 on its analysis and evaluation of the relevant factors, Class Counsel is satisfied that the  
22 terms and conditions of this Agreement are fair, reasonable, and adequate for Rule 23  
23 Class Members and FLSA Collective Members.

24 AA. As a result of these and other appropriate considerations, Named Plaintiffs,  
25 Rule 23 Class Members and FLSA Collective Members, and Defendants have agreed to a  
26 partial settlement of the Lawsuit as provided for herein.

27 **NOW, THEREFORE**, in view of the mutual covenants, promises, and valuable  
28 consideration set forth in this Agreement, the Parties hereby agree to a settlement of the

1 Lawsuit on the following terms and conditions:

2 **II. DEFINITIONS**

3 A. Agreement or Settlement Agreement: means this Settlement Agreement,  
4 including all Exhibits attached hereto.

5 B. AMWA: means the Arizona Minimum Wage Act, A.R.S. § 23-362, *et seq.*

6 C. Application for Attorneys' Fees and Costs: means the application to be filed  
7 by Plaintiffs and Class Counsel to compensate Class Counsel for their reasonable fees plus  
8 recoverable costs and expenses, if any.

9 D. AWA: means the Arizona Wage Act, A.R.S. § 23-350, *et seq.*

10 E. Change of Information Form: means the form attached hereto as Exhibit A  
11 with any modifications required or approved by the Court that may be completed and  
12 returned to the Settlement Administrator by Settlement Class Members and their Estate  
13 Representatives in accordance with Section V.

14 F. Claim Form: means the form that must be timely and validly completed,  
15 signed and returned by all Rule 23 Class Members, to confirm that they wish to receive a  
16 payment representing damages attributable to the AMWA claims under the terms of this  
17 Agreement, in the form attached hereto as Exhibit B with any modifications required or  
18 approved by the Court.

19 G. Class Counsel: means Martin & Bonnett, P.L.L.C.

20 H. Class Counsel's Attorneys' Fees and Costs Award: means the amount of the  
21 attorneys' fees and costs and expenses, if any, to be paid by Defendants as awarded by  
22 the Court to Class Counsel.

23 I. Class Representatives: means Named Plaintiffs together with such other  
24 Settlement Class Members that Class Counsel designates as additional named plaintiffs  
25 during the continued litigation of the Lawsuit including for any appeal and any remand  
26 therefrom.

27 J. Court: means the United States District Court for the District of Arizona.

28 K. Defendants: means the Defendants in this lawsuit, Driver Provider Phoenix,



1 LLC; Driver Provider Leasing, LLC; Innovative Transportation of Sedona, LLC;  
2 Innovative Transportation Solutions of Tucson, LLC; Innovative Transportation  
3 Solutions, Inc. (Arizona); Innovative Transportation Solutions, Inc. (Utah); Innovative  
4 Transportation Solutions, LLC; Driver Provider Management LLC; Jason Kaplan; Kendra  
5 Kaplan; Stephen Kaplan and Barbara Kaplan, husband and wife; Barry Gross and Donna  
6 Gross, husband and wife; and their respective affiliates, subsidiaries, successors and  
7 assigns.

8 L. Defense Counsel: means Tracy A. Miller and Douglas (Trey) Lynn of  
9 Ogletree, Deakins, Nash, Smoak & Stewart, P.C. or any firm who is substituted as  
10 attorneys of record for Defendants and so notifies Class Counsel.

11 M. Employee Payroll Taxes: means the employee portion of all applicable  
12 payroll taxes owed by the employee or more specifically those payroll taxes for which  
13 Settlement Class Members bear responsibility in connection with the portion of their  
14 Individual Settlement Award that shall be treated as wages paid by The Driver Provider  
15 and which shall be withheld from such Individual Settlement Award and remitted to the  
16 appropriate taxing agencies.

17 N. Employer Payroll Taxes: means The Driver Provider's share of FICA,  
18 FUTA, and any payroll taxes due on an Individual Settlement Award, or more specifically  
19 those payroll taxes for which The Driver Provider bears responsibility in connection with  
20 the portion of the Individual Settlement Award that shall be treated as wages, and which  
21 shall be paid by Defendants in addition to their obligation to fund the Settlement Amount.  
22 Employer Payroll Taxes shall not be considered part of the Settlement Amount and shall  
23 not be considered in calculating the Settlement Amount or Individual Settlement Awards.

24 O. Effective Date or Settlement Effective Date: means 30 days from the Final  
25 Approval Order provided no appeal has then been filed by any Settlement Class Member.

26 P. Estate Representative: means the court appointed representative of any  
27 deceased Settlement Class Member or, in the absence of a court appointed representative,  
28 the surviving spouse, or, in the absence of a surviving spouse, the surviving children, or

1 in the absence of a surviving spouse or children, the surviving parents of the Settlement  
2 Class Member.

3 Q. Exclusion Date: means the date to be set by the Court, by which an  
4 Exclusion Request must be submitted to the Settlement Administrator for a Rule 23 Class  
5 Member to be excluded from the Settlement Class.

6 R. Exclusion Request: means the written communication that must be  
7 submitted to the Settlement Administrator and postmarked, attached to an email, or hand  
8 delivered on or before the Exclusion Date by a Rule 23 Class Member or FLSA Collective  
9 Member who wishes to be excluded from the Settlement Class. A Rule 23 Class Member  
10 or FLSA Collective Member who makes an Exclusion Request is excluded from the  
11 litigation and not just the Settlement.

12 S. Final Approval Order and Judgment or Final Approval: means the order to  
13 be entered by the Court that grants final approval of the Settlement, determines the  
14 Application for Attorneys' Fees and Costs and enters judgment dismissing the Released  
15 Claims with prejudice and that: (i) conforms to this Settlement Agreement, (ii) approves  
16 the Settlement and the Settlement Agreement as fair, adequate, and reasonable, and (iii)  
17 issues such other determinations as the Court or the Parties deem necessary and  
18 appropriate in order to approve the settlement and implement the Settlement Agreement.

19 T. Final Fairness Hearing: means the hearing to be conducted by the Court to  
20 determine the fairness, adequacy, and reasonableness of the Settlement Agreement in  
21 accordance with Fed. R. Civ. P. 23 and the FLSA and to determine the Application for  
22 Attorneys' Fees and Costs.

23 U. Final Settlement Amount or Settlement Amount: means \$2,500,000.00,  
24 exclusive of the attorneys' fees and costs to be determined by the Court, to be paid to the  
25 Settlement Administrator by Defendants as set forth herein and distributed to Settlement  
26 Class Members by the Settlement Administrator in accordance with the Plan of  
27 Allocation.

28 V. FLSA Collective Members or Collective Members: means Named Plaintiffs

1 and those individuals who under § 16(b) of the FLSA filed in this Lawsuit opt-in consent-  
2 to-sue forms and whose participation and claims have not since been withdrawn, including  
3 the following individuals, whose consent-to-sue forms were deemed untimely by the  
4 Court (Doc. 723): Stephen Simmons, Clayton Bell, Randall Davis, Charles Muhammad,  
5 Patrick Kirkland, Daniel Vance, Billy Zinnerman, Michael Anderson, Kevin Williams,  
6 Ricky Smith, Octavia Yvette Davis-Brady, and Kris Ringgold. Collective Members will  
7 not include any individual who submitted a consent to sue form after March 7, 2024.

8 W. Individual Settlement Award: means the gross amount of the Settlement  
9 Fund to be paid to Settlement Class Members prior to deduction of applicable Employee  
10 Payroll Taxes and amounts withheld pursuant to legally applicable wage garnishments  
11 pursuant to the terms and conditions of this Agreement.

12 X. Notice Period: means thirty (30) days from the first mailing date postmarked  
13 on the first Notice of Settlement mailed by the Settlement Administrator.

14 Y. Notice Program: means the plan approved by the Court for disseminating  
15 the Settlement Notices as set forth herein.

16 Z. Objection Date: means the date to be set by the Court, by which objections  
17 to the Settlement must be submitted by Rule 23 Class Members or FLSA Collective  
18 Members who are not Named Plaintiffs.

19 AA. Party or Parties: means the Named Plaintiffs and/or Defendants.

20 BB. Plan of Allocation: means the plan and calculations for allocating the  
21 Settlement Fund as set forth herein setting forth the Individual Settlement Awards to be  
22 submitted to the District Court with the motion for Preliminary Approval.

23 CC. Preliminary Approval Order: means the order to be entered by the Court,  
24 substantially in the form of Exhibit C, that: preliminarily approves this Settlement  
25 Agreement; sets the date of the Fairness Hearing; approves the forms of Settlement Notice  
26 and the Notice Program; sets the Exclusion Date; and sets the deadline for filing objections  
27 to the Settlement.

28 DD. Released Claims: means the claims in the Lawsuit that were to be tried in

1 the trial that was scheduled to commence on April 16, 2024 including such claims for the  
2 Drivers who were found by the Court not to have submitted timely consent to sue forms  
3 (Doc. 723). Specifically, the Released Claims include Named Plaintiffs' and FLSA  
4 Collective Members' claims under the FLSA (but not under the AWA) for alleged failure  
5 to pay overtime; Named Plaintiffs' and FLSA Collective Members' claims under the  
6 FLSA for alleged failure to pay minimum wages in violation of the FLSA; Named  
7 Plaintiffs' claims for alleged failure to pay straight time under the AWA, and Named  
8 Plaintiffs' and Rule 23 Class Members' claims for alleged minimum wage violations of  
9 the AMWA. The Released Claims do not include: Named Plaintiffs' and Rule 23 Class  
10 Members' claims for civil penalties under the AMWA; Named Plaintiffs' and putative  
11 class members' claims for overtime under the AWA, and putative class members' claims  
12 for unpaid straight time under the AWA.

13 EE. Releasees: means Defendants and any and all current, former and future  
14 parents, subsidiaries, related companies or entities, partnerships, joint ventures, or other  
15 affiliates, and, with respect to each of them, all of their predecessors and successors,  
16 officers, directors, stockholders, owners and assigns.

17 FF. Rule 23 Class Members: means all current and former employees of The  
18 Driver Provider who performed chauffeur services in Arizona at any time from December  
19 6, 2016 through January 5, 2024 and who were identified by Defendants on the lists of  
20 Rule 23 Class Members provided to Plaintiffs on April 26, 2021 and November 29, 2023.  
21 Excluded from the class are all owners, managers, supervisors, dispatchers, or other  
22 employees whose primary job responsibilities were not the provision of chauffeur  
23 services.

24 GG. Service Award: means the \$20,000 payments to each Named Plaintiff to be  
25 paid from the Settlement Fund to compensate them for their efforts on behalf of the  
26 Settlement Class or such other amounts as approved by the Court, and the \$2,000  
27 payments to the other ten FLSA Collective Members who provided deposition testimony  
28 in this case or such other amounts as approved by the Court.

1           HH. Settlement Administrator or Administrator: means Atticus Administration,  
2 1260 Northland Drive, Suite 240, Mendota Heights, MN 55120.

3           II. Settlement Class or Settlement Class Members: means all Named Plaintiffs  
4 together with all Rule 23 Class Members and FLSA Collective Members who do not  
5 submit a valid Exclusion Request pursuant to the terms of this Agreement.

6           JJ. Settlement Fund: means a qualified settlement fund established under  
7 Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1, to be funded by  
8 Defendants in the amount of Two Million Five Hundred Thousand Dollars  
9 (\$2,500,000.00). The Settlement Fund does not include Class Counsel's Attorneys' Fees  
10 and Costs Award, and costs associated with the notice and settlement administration,  
11 which shall be paid separately by Defendants following the Court's order on the  
12 Application for Attorneys' Fees and Costs. The Settlement Administrator shall pay all  
13 monies payable to the Settlement Class Members from the Settlement Fund in accordance  
14 with the Plan of Allocation.

15           KK. Settlement Notice: means the official notice of settlement of the Lawsuit,  
16 materially in the form attached hereto as Exhibit D with any modifications required or  
17 approved by the Court that the Settlement Administrator shall provide to the Rule 23 Class  
18 Members and the FLSA Collective Members as set forth in Section V.

19           LL. Settlement Notice Period: means the dates set by the Court for Rule 23 Class  
20 Members and FLSA Collective Members to review the Settlement Notice, determine  
21 whether they want to participate or exclude themselves or object, as applicable.

### 22                                   **III. STATEMENT OF NO ADMISSION**

23           Defendants deny liability upon any claim or cause of action presented or alleged or  
24 that could have been presented or alleged in the Lawsuit, and Defendants deny that the  
25 Settlement Class is entitled to relief of any kind in this Lawsuit. This Settlement  
26 Agreement does not constitute an admission by Defendants as to the merits, validity, or  
27 accuracy of the allegations or claims made against them in the Lawsuit and may not be  
28 construed as or deemed an admission of liability, culpability, negligence, willfulness, or

1 wrongdoing on the part of Defendants. Nothing in this Settlement Agreement is intended  
2 by the Parties or may be used by anyone for any purpose inconsistent with this Settlement  
3 Agreement, or may be introduced in any way as evidence, to show or establish any  
4 misconduct, or improper practices, plans, or policies, or any violation of any federal, state,  
5 or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or  
6 duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may  
7 be used in any proceeding that has as its purpose the enforcement of the Settlement  
8 Agreement.

#### 9 **IV. PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLEMENT**

10 Named Plaintiffs believe that the claims asserted in the Lawsuit are meritorious  
11 and that the law, evidence developed through extensive written and deposition discovery  
12 supports their claims. Named Plaintiffs and Class Counsel recognize the expense and  
13 complexities of continued litigation, along with the uncertain outcome and risks of a jury  
14 trial. Named Plaintiffs and Class Counsel believe that the Settlement Agreement confers  
15 substantial benefits upon the Settlement Class Members and Named Plaintiffs and is fair,  
16 reasonable, adequate, and in the best interests of Named Plaintiffs and the Settlement Class  
17 Members. This Agreement is not an admission by Named Plaintiffs nor by the Settlement  
18 Class Members concerning the merits, or lack thereof, of the Released Claims.

#### 19 **V. SETTLEMENT PROCEDURES**

##### 20 **A. Preliminary Approval Motion**

21 No later than May 20, 2024, Named Plaintiffs shall file the Preliminary Approval  
22 Motion with the Court for entry of the Preliminary Approval Order, and the Parties will  
23 file a joint motion for approval of an order modifying the Rule 23 Class as follows:

24 All current and former employees of The Driver Provider who performed  
25 chauffeur services in Arizona at any time from December 6, 2016 to January  
26 5, 2024 and were identified by Defendants on the class lists provided to  
27 Plaintiffs on April 26, 2021 and November 9, 2023. Excluded from the class  
28 are all owners, managers, supervisors, dispatchers, or other employees  
whose primary job responsibilities were not the provision of chauffeur  
services.

1           The Preliminary Approval Motion and Motion to Modify shall request that the  
2 Court approve distribution of the Settlement Notice, Claim Form, and Change of  
3 Information Form and associated dates and set a date and time for the Fairness Hearing at  
4 the Court's earliest practicable date following close of the Notice Period

5 **B.     Settlement Class Notification**

6           The Administrator shall provide the Claim Form, Change of Information Form and  
7 Settlement Notice to each Rule 23 Class Member and each FLSA Collective Member  
8 within seven (7) calendar days following the order granting Preliminary Approval Order.  
9 Notice will be sent by first-class mail and will also be sent by email and, if available, text  
10 message to all known email addresses and phone numbers of Rule 23 Class Members and  
11 FLSA Collective Members. Before mailing, the Administrator shall perform a National  
12 Change of Address (NCOA) search. If Settlement Notices are returned for insufficient  
13 address, the Settlement Administrator will notify Class Counsel within one day thereof  
14 and shall conduct one skip trace and take such other reasonable steps to ensure Settlement  
15 Notice is provided to the Rule 23 Class Members and FLSA Collective Members. In  
16 addition, the Settlement Administrator shall also post the Settlement Notice, Claim Form  
17 and Change of Information Form on the website described in Section V.

18 **C.     Submission of Claim Form**

19           FLSA Collective Members will automatically be deemed Settlement Class  
20 Members and, if they have losses, receive a payment under this Settlement Agreement  
21 without submission of a Claim Form. However, all Estate Representatives of deceased  
22 FLSA Collective Members must submit a Change of Information Form in order to receive  
23 a payment. In order to receive a payment under the Settlement Rule 23 Class Members  
24 who are not FLSA Collective Members who have losses and Estate Representatives of  
25 deceased Rule 23 Class Members who are not FLSA Collective Members must submit a  
26 Claim Form to the Settlement Administrator, which must be postmarked or submitted  
27 electronically to the Settlement Administrator through the Settlement Administrator's  
28 secure website established for such purposes before the expiration of the Notice Period

1 and must also submit a Change of Information Form. The Settlement Administrator shall  
2 provide updates to the parties at least twice per week, or more frequently if requested,  
3 regarding the Claim Forms it has received. If a Party or the Party's attorney receives a  
4 Claim Form or Change of Information Form, the Party shall notify the Settlement  
5 Administrator and the other Parties within one business day of receipt and will forward a  
6 copy of all such forms and information received. The Settlement Administrator will  
7 promptly notify the Parties' attorneys and a Settlement Class Member or Estate  
8 Representative if it receives a Claim Form and/or Change of Information Form that is  
9 incomplete, is inconsistent with other submissions or contains known errors, is not timely  
10 and/or otherwise valid and, except in the case of an initial Claim Form that is untimely,  
11 the Settlement Administrator shall afford the Settlement Class Member an opportunity to  
12 resubmit the form or reconcile any inconsistencies up to the day before the Final Fairness  
13 Hearing. If there are any disputes regarding the timeliness, validity, or effectiveness of a  
14 Claim Form or Change of Information Form, the Parties shall work in good faith to resolve  
15 the dispute and, if they are unable to do so, such dispute shall be decided by the Court.

16 **D. Payment of Administrative Costs**

17 The Settlement Administrator will invoice The Driver Provider directly for the  
18 reasonable costs of notice and the reasonable fees of administration. The Driver Provider  
19 will timely pay the same.

20 **E. Duties of Settlement Administrator**

21 Duties of the Settlement Administrator shall include without limitation:

22 1. maintaining a website for purposes of administration of the Settlement,  
23 including making available the Settlement Notice, the Claim Form, the Change of  
24 Information Form, and other Settlement information and for acceptance of Claim Forms  
25 and Change of Information Forms;

26 2. compiling the lists of Claims Forms received, Exclusion Requests received,  
27 objections received, mailings sent and returned, answering inquiries and referring issues  
28 to Class Counsel and keeping Class Counsel and Defense Counsel apprised weekly of



1 these and other pertinent activities;

2 3. handling all mailings to the Settlement Class Members;

3 4. tracing undeliverable mailings;

4 5. recording and tracking responses to the mailing to the Settlement Class  
5 Members (including recording the identity of any Settlement Class Member who submits  
6 a Claim Form, Change of Information Form or Exclusion Request);

7 6. timely issuing and mailing Individual Settlement Awards and making  
8 electronic transfers of Individual Settlement Awards to Settlement Class Members who  
9 provide information enabling the Settlement Administrator to make such transfers;

10 7. reporting the Defendants' payment of the Individual Settlement Awards to  
11 all required taxing and other authorities and ensuring that all Settlement Class Members  
12 receive on behalf of the Defendants the appropriate 1099 and W-2 forms;

13 8. taking appropriate withholding from the Individual Settlement Awards;

14 9. remitting all Employee Taxes to the proper authorities;

15 10. establishing a Qualified Settlement Fund ("QSF") pursuant to Section  
16 468B(g) of the Internal Revenue Code, and regulations promulgated thereunder for the  
17 purpose of administering this Settlement;

18 11. transmitting all Claim Forms, objections from Settlement Class Members,  
19 and Exclusion Requests to Class Counsel and counsel for Defendants at least twice a week  
20 or more frequently if requested;

21 12. promptly providing information as reasonably requested by the Parties and  
22 sharing updates and information equally with both Parties; and

23 13. Submitting a declaration or declarations to the Court with respect to its  
24 mailing of the Settlement Notice, Returned Mail, Skip Tracing and other efforts, the total  
25 claims forms received, total Exclusion Requests and objections received and other details  
26 regarding its activities with respect to the Settlement Notice and Notice Period, and the  
27 results of the other related tasks as mutually agreed to by the Parties or ordered by the  
28 Court.

1 **F. Issuance of Notice Under the Class Action Fairness Act**

2 Pursuant to the Class Action Fairness Act of 2005, PL 109-2 (2005) and 28 U.S.C.  
3 § 1715 (“CAFA”) Defendants shall prepare and serve the notices required by CAFA,  
4 including the notices to the United States Department of Justice and to the Attorneys  
5 General of all states in which Settlement Class members reside, as specified by 28 U.S.C.  
6 § 1715, within ten (10) days of the filing of the motion for Preliminary Approval.  
7 Defendants shall give Named Plaintiffs the opportunity to review the notices at least five  
8 (5) days before service and shall give written notice to Class Counsel as soon as the CAFA  
9 notices have been served.

10 **G. Final Fairness Hearing**

11 In the motion for Preliminary Approval and in the Motion to Amend the Class,  
12 Named Plaintiffs shall request that the District Court set a Fairness Hearing as soon as  
13 practicable following the close of the Notice Period to determine the fairness,  
14 reasonableness, and adequacy of the Settlement, the dismissal with prejudice of the  
15 Released Claims of the Named Plaintiffs and the Settlement Class Members, and the  
16 request by Class Counsel for Service Awards to Named Plaintiffs and payment of amounts  
17 for Individual Settlement Awards and Class Counsel’s Attorneys’ Fees and Costs Award  
18 pursuant to the Application for Attorneys’ Fees and Costs. Named Plaintiffs shall request  
19 that the Fairness Hearing be set approximately sixty (60) days from the date of mailing of  
20 the Notice. At least seven (7) calendar days before the Final Fairness Hearing, the  
21 Settlement Administrator shall prepare a declaration of due diligence and proof of mailing  
22 with regard to its mailing of the Settlement Notice, attempts by it to locate Class Members,  
23 its receipt of valid Claim Forms, its receipt of objections and requests to appear at the  
24 Final Fairness Hearing, its receipt of requests for exclusion, and its inability to deliver the  
25 Notice of Settlement to Class Members due to invalid addresses (“Due Diligence  
26 Declaration”), to Class Counsel and Defense Counsel for presentation to the Court. Class  
27 Counsel shall be responsible for filing the Due Diligence Declaration with the Court.

1 **VI. PLAN OF ALLOCATION**

2 The Settlement Fund will be allocated to provide Individual Settlement Awards,  
3 Individual Damage Awards, Service Awards and employee tax withholding on amounts  
4 allocated as wages to be withheld by the Settlement Administrator. Class Members'  
5 Individual Settlement Awards will be determined according to an allocation formula  
6 determined by Class Counsel in consultation with Plaintiffs Damages Expert based on  
7 Plaintiffs' expert's calculation of damages as set forth in his expert report dated March  
8 26, 2024, as amended to correct any errors or omissions and to include persons excluded  
9 by the Court's order dated March 18, 2024 (Doc. 723). This allocation takes into account  
10 the following factors: the claims asserted by the Settlement Class Members, their  
11 estimated number of hours worked in a workweek, the amount paid to each Class Member,  
12 and the relative strengths of the claims for damages.

13 Class Counsel shall work with Plaintiffs' expert to determine each Class Member's  
14 Individual Settlement Award and provide such estimated Individual Settlement Awards  
15 to Defendants (based on the assumption that the Court grants the requests for Service  
16 Awards) prior to the Preliminary Approval Motion. Class Counsel may update and revise  
17 Individual Settlement Awards based on new, corrected or updated information and/or  
18 data. Class Counsel will submit to the Court and Defendants a list of the Individual  
19 Settlement Awards on or before three (3) days prior to the Final Fairness Hearing and  
20 shall submit a final Plan of Allocation on or before three (3) days after the rulings on the  
21 motion for final approval and for a Service Award.

22 Class Counsel shall also submit a list of estimated Individual Settlement Awards  
23 to the Court with the Preliminary Approval Motion. The Settlement Administrator shall  
24 include each Class Member's estimated Individual Settlement Award in their  
25 individualized Settlement Notice. The Settlement Notice shall state that Individual  
26 Settlement Award may be more or less and may be adjusted based on the determinations  
27 by the Court or in the event Class Counsel and Named Plaintiffs' expert obtain new or  
28 corrected information.

1 Each Settlement Class Member's Individual Settlement Award shall be determined  
2 according to the following formula.

3 **A. Individual Settlement Awards for FLSA Collective Members** shall be  
4 approximately 67.12% of the amount calculated by Plaintiff's expert as unpaid FLSA  
5 minimum wage damages plus approximately 60.12% of the amount calculated by  
6 Plaintiff's expert as unpaid FLSA overtime damages. The amount of damages was  
7 calculated by Plaintiffs' expert as total unpaid wages due (i.e., overtime premiums due,  
8 minimum wages due and overtime premiums on minimum wage due) plus an equal  
9 amount of liquidated damages for the time period beginning three years prior to the filing  
10 of the individual's consent to sue form up through January 5, 2024. For FLSA Collective  
11 Members who first received notice of their right to file a Consent to Sue form in 2023  
12 pursuant to the Court's November 15, 2023 Order granting supplemental notice (Doc.  
13 605), Plaintiffs' expert calculated the time period for determining damages as three years  
14 and two weeks prior to the filing of the Consent to Sue form. If any Exclusion Requests  
15 are submitted by FLSA Collective Members, the excluded FLSA Collective Members'  
16 Individual Settlement Award attributable to his or her FLSA minimum wage and overtime  
17 damages shall be reallocated and paid to the FLSA Collective Members who did not  
18 submit an Exclusion Request and suffered FLSA damages.

19 **B. Individual Settlement Awards for Rule 23 Class Members Who Are Not FLSA**  
20 **Collective Members for Minimum Wage Claims under the AMWA** shall be  
21 approximately 67.12% of the amount of damages attributable to unpaid Minimum Wages  
22 under the AMWA as calculated by Plaintiff's expert. The amount of damages was  
23 calculated by Plaintiff's expert as total unpaid Arizona Minimum Wage damages due  
24 beginning from the start of Rule 23 Class Members' employment with The Driver  
25 Provider through January 5, 2024 plus twice that amount plus applicable interest due  
26 through September 1, 2024.

27 **C. Individual Settlement Awards for Settlement Class Members who are both**  
28 **FLSA Collective Members and Rule 23 Class Members.** In addition to receiving the

1 amounts set forth in paragraph (i), Individual Settlement Awards for FLSA Collective  
2 Members who are both FLSA Collective Members and Rule 23 Class Members who  
3 submit a Claim Form shall be approximately 67.12% of the amount of damages  
4 attributable to unpaid Minimum Wages under the AMWA that exceeds the amount of  
5 minimum wage damages under the FLSA as calculated by Plaintiff's expert. FLSA  
6 Collective Members are not required to submit a claim form to receive the Individual  
7 Settlement Award for their FLSA claims in Paragraph (i) but are required to submit a  
8 claim form to receive the difference between their Individual Settlement Award  
9 attributable to their FLSA minimum wage damages and the Individual Settlement Award  
10 attributable to their minimum wage damages under the AMWA.

11 **D. Individual Damages Awards to Rodney Lopez and Greg Hanna for their**  
12 **claims for straight time under the AWA** shall be approximately 67.12% of the amounts  
13 determined as damages for their straight time claims by Plaintiffs' expert.

14 **E. Service Awards for the Named Plaintiffs and the 10 FLSA Collective Member**  
15 **Deponents.** Named Plaintiffs shall file an application for Service Awards to be paid to  
16 Named Plaintiffs and FLSA Collective Members who were deposed by Defendants within  
17 twenty-one (21) days prior to the end of the Notice Period. The amounts awarded as  
18 Service Awards shall be approved by the Court and paid from the Settlement Fund.  
19 Service Awards shall be paid at the same time and in addition to each Named Plaintiff's  
20 or FLSA Collective Member's Individual Settlement Award from the Settlement Amount.  
21 Service Awards shall be distributed with a Form 1099. Any changes from the amounts  
22 sought in the application shall not affect the validity of the Settlement and if less than the  
23 amount sought is awarded by the Court such amount shall not revert to Defendants but  
24 rather shall be reallocated and paid to the FLSA Collective Members who suffered FLSA  
25 overtime damages.

26 **VII. CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND**  
27 **COSTS**

28 Named Plaintiffs and Class Counsel shall file Class Counsel's Application for

1 Attorney's Fees and Costs within twenty-one (21) days prior to the end of the Notice  
2 Period. Defendants retain the right to oppose Class Counsel's application for fees and  
3 costs and expenses and do not waive any defenses to any such application. Defendants  
4 may file a response in opposition to the Application for Attorney's Fees and Costs within  
5 twenty-one (21) days after the Application for Attorneys' Fees and Costs is filed. Plaintiffs  
6 may file a reply brief within fourteen (14) days after Defendants' response. Plaintiffs may  
7 also file responses to objections or comments, if any, from Settlement Class Members  
8 regarding attorneys' fees and costs within five (5) days prior to the Fairness Hearing.

9 Class Counsel's Attorneys' Fees and Costs Award is in addition to the Settlement  
10 Amount and shall be paid directly to Class Counsel by Defendants. Class Counsel shall  
11 retain the right, if any, to seek a further award of fees, costs and expenses incurred or to  
12 be incurred in the Lawsuit and not sought in connection with this Settlement along with  
13 fees, costs and expenses to be incurred in any appeal or remand. Defendants retain all  
14 rights to oppose any such application.

## 15 **VIII. TIMING AND METHOD OF PAYMENT**

### 16 **A. Payment**

17 Defendants will fund the Final Settlement Amount by depositing such amount with  
18 the Settlement Administrator within ten (10) days of the Effective Date. If a Settlement  
19 Class Member files a timely appeal, Defendants shall deposit the Final Settlement Amount  
20 with the Settlement Administrator 30 days following the Final Approval Order, and the  
21 Settlement Administrator shall hold the Final Settlement Amount in an interest bearing  
22 escrow account pending the appeal and upon completion of the appeal shall pay the Final  
23 Settlement Amount to Settlement Class Members with interest unless Article XII herein  
24 is applicable in which case the Settlement Administrator shall return the Final Settlement  
25 Amount to Defendants with interest. Nothing in this Agreement shall be construed as  
26 waiving any bond or other security requirements in the event of an appeal.

### 27 **B. Reversion**

28 An amount of no less than Five Hundred Thousand Dollars (\$500,000.00) shall be

1 allocated to Rule 23 AMWA claims and is subject to reversion on a claims-made basis for  
2 the Rule 23 Class Members. Rule 23 Class Members who are not also FLSA Collective  
3 Members must submit a Claim Form in order to participate in the settlement and receive  
4 their Individual Settlement Award. Rule 23 Class Members who are also FLSA Collective  
5 Members must submit a Claim Form in order to receive the difference (additional  
6 amounts) between their Individual Settlement Award for the minimum wage damages  
7 under the FLSA and their Individual Settlement Award for their minimum wage damages  
8 under the AMWA. In the event any Rule 23 Class Members who are not also FLSA  
9 Collective Members do not submit a Claim Form to participate in the Settlement, their  
10 Individual Settlement Award shall revert to Defendants. In the event any Rule 23 Class  
11 Members who are also FLSA Collective Members do not submit a Claim Form, the  
12 difference (additional amounts) between their Individual Settlement Award for the  
13 minimum wage damages under the FLSA and their Individual Settlement Award for their  
14 minimum wage damages under the AMWA shall revert to Defendants.

15 **C. Timing of Individual Settlement Awards**

16 Individual Settlement Awards to Settlement Class Members shall be paid by the  
17 Settlement Administrator within twenty (20) days following the Effective Date by check  
18 or by electronic funds transfer if the Settlement Class Member has designated an account  
19 for such transfer. If an Individual Settlement Award cannot be paid within twenty (20)  
20 days following the Effective Date, and the Settlement Administrator has informed the  
21 Parties' counsel, then the Settlement Administrator shall make such payments as soon as  
22 possible.

23 **D. Tax Treatment of Payments**

24 Awards to Settlement Class Members will be treated as 50% as wages and 50% as  
25 1099 income. Service Awards to Named Plaintiffs and FLSA Collective Members who  
26 were deposed will be treated as 1099 income. On the wage portion of the Individual  
27 Settlement Awards, Defendants shall pay the employer's share of payroll taxes and  
28 Settlement Class Members shall pay the employee's share.

1           Each Individual Settlement Award treated as wages from The Driver Provider will  
2 be reported on IRS Form W-2. The Settlement Administrator shall calculate and withhold  
3 appropriate amounts for Employee Taxes and legally applicable wage garnishments from  
4 those wages and pay all such withheld funds, to the appropriate state and federal taxing  
5 authorities and judgment creditors for legally applicable wage garnishments from the  
6 Individual Settlement Award. The Driver Provider is responsible for calculating the  
7 corresponding share of Employer Taxes and paying all such taxes to the appropriate state  
8 and federal taxing authorities. The remaining amounts of the Individual Settlement  
9 Awards will be treated as additional, non-wage penalties and interest paid by The Driver  
10 Provider, not subject to payroll withholdings, except for legally applicable wage  
11 garnishments, and shall be reported by the Settlement Administrator as paid by The Driver  
12 Provider on an IRS Form 1099. The Settlement Administrator will provide to all Parties  
13 records of what was paid to each Settlement Class Member and records of the W-2 forms  
14 and IRS Form 1099s issued to Settlement Class Members. Neither Settlement Class  
15 Members nor Class Counsel nor Named Plaintiffs shall bear any responsibility in  
16 connection with the Employer Taxes owed on the Individual Settlement Award. No  
17 Employer Taxes shall be deducted from the Settlement Amount, Settlement Fund or  
18 Individual Settlement Awards. All Settlement Class Members will be specifically  
19 informed that neither Defendants nor Class Counsel make any representations regarding  
20 the tax implications of any amounts paid under this Settlement Agreement and that if any  
21 Settlement Class Member has any questions regarding those implications, they can and  
22 should consult a tax professional.

23           The Settlement Administrator shall provide each Settlement Class Member who is  
24 entitled to an Individual Settlement Award with an IRS Form W-2 reflecting the wages  
25 and the taxes withheld from those wages and with an IRS Form 1099 reflecting the non-  
26 wage damages and interest paid. Settlement Class Members agree not to hold Class  
27 Counsel or Defendants responsible for any taxes, interests, penalties, and/or costs  
28 associated with any taxes Settlement Class Members owe in connection with their



1 Individual Settlement Award.

2 **E. Verification of Individual Settlement Award**

3 The Settlement Administrator shall verify that Individual Settlement Awards are  
4 made to the Settlement Class Members, and this verification and proof of payment shall  
5 be filed with the Court and provided to the Parties. Any checks issued to Settlement Class  
6 Members shall remain valid and negotiable for six (6) months from the date of their  
7 mailing. At least one month prior to the conclusion of the six month check cashing period,  
8 the Settlement Administrator shall make reasonable attempts to locate the Settlement  
9 Class Members whose checks have not been cashed or their electronic funds returned or  
10 rejected. Such reasonable efforts shall include at least one skip trace for each Settlement  
11 Class Member whose check remains uncashed if the Settlement Class Member cannot be  
12 located and reissuance of any payments for Settlement Class Members whose payments  
13 can be reissued. Within seven (7) business days of the conclusion of the six-month check  
14 cashing period, the Settlement Administrator shall inform the Parties regarding the status  
15 of any uncashed checks and returned electronic funds transfer payments, including the  
16 amount, and the identity of the corresponding Settlement Class Member with an uncashed  
17 check. Within ten (10) business days of the conclusion of the six-month check cashing  
18 period, the Settlement Administrator will file a declaration with the Court regarding the  
19 status of uncashed checks and unclaimed Individual Settlement Award, including the  
20 identities of the Settlement Class Members with an uncashed check. If any Settlement  
21 Class Member does not cash his or her settlement check or in the event that an electronic  
22 funds transfer to the Settlement Class Member is rejected because the Settlement Class  
23 Member does not have an account with the designated financial institution and provided  
24 reasonable efforts have been made to locate the Settlement Class Member, the funds will  
25 be remitted by the Settlement Administrator to the Settlement Class Members' resident  
26 state's applicable unclaimed property division as soon as practicable following the  
27 conclusion of the six month check cashing period and shall file a declaration with the  
28 Court regarding the same.

1 **F. Timing and Method of Payment of Service Awards**

2 Service Awards shall be paid from the Settlement Fund by the Settlement  
3 Administrator without any withholdings within twenty (20) days following the Effective  
4 Date by check or by electronic funds transfer if the Named Plaintiff or FLSA Collective  
5 Member receiving a Service Award has designated an account for such transfer in  
6 accordance with the Court's Final Approval Order and this Settlement Agreement and  
7 reported by the Settlement Administrator on IRS Form 1099s (checking Box 3). Named  
8 Plaintiffs and FLSA Collective Members receiving Service Awards shall be responsible  
9 for all taxes associated with those payments. Named Plaintiffs and FLSA Collective  
10 Members who receive Service Awards agree not to hold Class Counsel or Defendants  
11 responsible for any taxes, interests, penalties, and/or costs associated with any taxes they  
12 owe in connection with their Service Awards.

13 **G. Timing and Method of Payment of Class Counsel's Attorneys' Fees and Costs  
14 Award, Defendants' Right to Appeal**

15 Defendants shall pay the full balance of Class Counsel's Attorneys' Fees and Costs  
16 Award to Class Counsel by wire transfer in accordance with Class Counsel's direction not  
17 later than 30 days from the Court's Order on the Application for Attorneys' Fees and  
18 Costs, or 30 days from the Effective Date, whichever is later. This amount will be reported  
19 on IRS Form 1099 issued to Class Counsel and not to the Settlement Class Members.  
20 Class Counsel shall be responsible for all taxes associated with any Attorneys' Fees and  
21 Costs awarded Class Counsel. In the event the Court does not approve the entirety of the  
22 Application for Attorneys' Fees and Costs, Class Counsel may appeal the Award.  
23 Defendants retain all rights to appeal any award of Attorneys' Fees and Costs. An appeal  
24 of Class Counsel's Attorneys' Fees and Costs Award shall not delay the Effective Date.  
25 If Plaintiffs or Class Counsel appeal Class Counsel Attorneys' Fees and Costs Award,  
26 Defendants shall pay whatever amount the Court awards as Class Counsel Attorneys' Fees  
27 and Costs Award pending the appeal within 30 days following the filing of the notice of  
28 appeal, unless Defendants also appeal or cross appeal the award of Attorneys' Fees and  
Costs, in which case Defendants shall post any bond required by the Court.

1 **IX. RELEASE OF CLAIMS**

2 **A. Release of Claims of Settlement Class Members**

3 Upon the Settlement Effective Date, Settlement Class Members shall be deemed to  
4 have irrevocably and unconditionally released and discharged the Releasees with respect  
5 to all Released Claims through January 5, 2024, regardless of whether such Settlement  
6 Class Members have losses entitling them to receive an Individual Settlement Award.  
7 Nothing in this Agreement shall prevent any Settlement Class Member from serving as a  
8 Class Representative during the pendency of the Lawsuit.

9 **B. Release of Claims**

10 Upon the Settlement Effective Date, the Named Plaintiffs shall be deemed to have  
11 irrevocably and unconditionally released and discharged the Releasees with respect to all  
12 claims of any kind against the Releasees as of the date of this Agreement with the  
13 exception of claims asserted in this lawsuit that are not part of the Released Claims and  
14 the right to class certification with respect to such claims and with respect to the  
15 Application for Attorneys' Fees and Costs. For the avoidance of doubt, Named Plaintiffs  
16 are not releasing their claims for civil penalties under the AMWA nor claims under the  
17 AWA other than Named Plaintiffs' straight time wage claims nor are they releasing their  
18 claims for Attorneys' Fees and Costs. Subject to the foregoing exceptions, the claims that  
19 Named Plaintiffs are releasing include:

- 20 **i.** all Released Claims;
- 21 **ii.** all claims that relate in any way to Named Plaintiffs' employment  
22 with The Driver Provider, the terms and conditions of Named Plaintiffs'  
23 employment with The Driver Provider, the cessation of Named Plaintiffs'  
24 employment with The Driver Provider, and any actions and/or omissions after the  
25 cessation of Named Plaintiffs' employment with The Driver Provider prior to the  
26 date of this Agreement;
- 27 **iii.** all claims asserted by any other employee of The Driver Provider in  
28 which Named Plaintiffs have claimed or could claim any interest;

1           iv.       all claims, whether in tort, contract, by statute, or on any other basis,  
2           whether in law or in equity, whether civil, criminal, or administrative, whether  
3           known or unknown, for damages or monies owed by Releasees;

4           v.       all claims under the following laws, as amended, to the maximum  
5           extent permitted by law: the Age Discrimination in Employment Act, as amended  
6           by the Older Workers Benefit Protection Act; Section 1981 of the Civil Rights Act  
7           of 1866; Title VII of the Civil Rights Act; the Americans with Disabilities Act; the  
8           Federal Family and Medical Leave Act; the Worker Adjustment and Retraining  
9           Notification Act; the National Labor Relations Act; the Labor Management  
10          Relations Act; the Fair Credit Reporting Act; the Employee Retirement Income  
11          Security Act of 1974; the Genetic Information Nondiscrimination Act of 2008; the  
12          Health Insurance Portability and Accountability Act; the Occupational and Safety  
13          Health Act; the Equal Pay Act; the Uniformed Services Employment and Re-  
14          employment Act; Executive Orders 11246 and 11141; the False Claims Act  
15          (including the qui tam provision thereof); the Consolidated Omnibus Budget  
16          Reconciliation Act of 1986; the Rehabilitation Act of 1973; the Electronic  
17          Communications Privacy Act of 1986 (including the Stored Communications Act);  
18          the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and  
19          Consumer Protection Act, the Arizona Employment Protection Act, the Arizona  
20          Civil Rights Act, the Arizona Medical Marijuana Act, the Rehabilitation Act of  
21          1973, the Family and Medical Leave Act, Sections 1981 through 1988 of Title 42  
22          of the United States Code, the Immigration Reform Control Act, and/or any other  
23          federal, state or local statute, law, regulation or ordinance.

24 **C.   No Application or Rehire**

25           Named Plaintiffs agree that they are not currently employed by any of the  
26           Releasees. The Parties agree that the future employment or re-employment of Named  
27           Plaintiffs by any of the Releasees is neither practical nor desirable. Therefore, Named  
28           Plaintiffs agree that they will not apply for or otherwise seek employment with any of the

1 Releasees. In the event Named Plaintiffs seek employment, reinstatement, or assignment  
2 to work with any of the Releasees, whether by responding to an advertisement or any other  
3 form of solicitation or recruitment or otherwise, Named Plaintiffs agree that their  
4 response, application, assignment, or request for employment shall be deemed null and  
5 void, as if never made. Notwithstanding, in the event Driver Provider acquires, is acquired,  
6 merges consolidates or otherwise joins with or contracts with an entity that employs a  
7 Named Plaintiff at the time the acquisition, merger or consolidation is consummated,  
8 continued employment by Named Plaintiffs shall not be considered a breach of this  
9 Agreement nor shall Named Plaintiffs be required to relinquish employment.

10 **D. No Other Unresolved Charges or Lawsuits**

11 Defendants and Named Plaintiffs certify that, apart from those specifically set forth  
12 herein, they have not filed any other unresolved charges, lawsuits, claims, or complaints  
13 with any court or government agency regarding or related to Named Plaintiffs' work with  
14 The Driver Provider.

15 **X. CLASS MEMBERS' RIGHTS TO EXCLUDE THEMSELVES FROM THE**  
16 **SETTLEMENT**

17 **A. Exclusion Request Procedures**

18 Any Rule 23 Class Member or FLSA Collective Members who wishes to opt out  
19 of the Settlement pursuant to Fed. R. Civ. P. 23(b)(3) may do so provided he or she submits  
20 to the Settlement Administrator, a written request setting forth the following: (1) the Rule  
21 23 Class Member or FLSA Collective Member's name; (2) the Rule 23 Class Member or  
22 FLSA Collective Member's mailing address and phone number; and (3) the statement "I  
23 want to be excluded from The Driver Provider Settlement" or an equivalent statement to  
24 that effect. To be timely, a written request to be excluded from the Rule 23 Class Member  
25 or FLSA Collective Member must be postmarked on or before forty-five (45) days from  
26 the date Settlement Notice is first mailed to the Rule 23 Class Members and FLSA  
27 Collective Members or other such date which is established by the Court or hand delivered  
28 within such forty-five (45) day period. The Settlement Administrator shall notify the

1 Parties of any the Rule 23 Class Member or FLSA Collective Member Exclusion Requests  
2 received within one business day and shall notify the Court of such Exclusion Requests  
3 prior to the Final Fairness Hearing. Any Party who receives an Exclusion Request shall  
4 immediately inform the other Party and Settlement Administrator and provide a copy of  
5 such Exclusion Request.

6 **B. Consequences of Failure to Request Exclusion on a Timely Basis**

7 Any Rule 23 Class Member or FLSA Collective Member (or his or her attorney)  
8 who fails to comply with the provisions of this section shall waive any rights the Rule 23  
9 Class Member or FLSA Collective Member may have to opt out of the Settlement Class  
10 and shall be bound by all the terms of the Agreement and by all proceedings, orders, and  
11 judgments in the Lawsuit.

12 **XI. SETTLEMENT CLASS MEMBERS' RIGHTS TO OBJECT TO**  
13 **SETTLEMENT AND DEADLINES TO FILE PAPERS IN SUPPORT OF**  
14 **OR IN OPPOSITION TO SETTLEMENT**

15 **A. Objection Procedures**

16 Any Settlement Class Member who wishes to object to the fairness,  
17 reasonableness, or adequacy of this Settlement Agreement, their Individual Settlement  
18 Award the Service Award, the Individual Damages Claim Payments, or the Application  
19 for Attorneys' Fees and Costs, must submit to the Settlement Administrator no later than  
20 thirty (30) days from the date Settlement Notice is first mailed to the Rule 23 Class  
21 Members and FLSA Collective Members or other such date which is established by the  
22 Court within such thirty (30) day period, a statement of the objection, as well as the  
23 specific reason(s), if any, for each objection, including any legal support that the  
24 Settlement Class Member wishes to bring to the Court's attention and any evidence the  
25 Settlement Class Member wishes to introduce in support of the objection. Any Settlement  
26 Class Member who files and serves a written objection, as described herein, may appear  
27 at the Final Fairness Hearing and request to be heard with respect to the objection timely  
28 submitted in accordance with this Paragraph. The Settlement Administrator shall notify

1 the Parties of any objections within one day of receipt. Any Party who receives an  
2 objection shall immediately inform and forward a copy of the objection to the other Party  
3 and the Settlement Administrator.

4 **B. Right of Settlement Class Members to Have an Attorney Represent Them at**  
5 **Their Own Expense**

6 Settlement Class Members filing a written objection or appearing at the Final  
7 Fairness Hearing in accordance with this Paragraph may do so either on their own or  
8 through an attorney hired at their own expense. If a Settlement Class Member hires an  
9 attorney to represent him or her (at his or her own cost and expense), the attorney must  
10 file a notice of appearance with the Clerk of the District Court no later than fourteen (14)  
11 days before the Final Fairness Hearing and serve a copy of such notice of appearance on  
12 the Settlement Administrator. The Settlement Administrator shall notify the Parties of any  
13 Notice of Appearances by a Class Member's separate counsel within one day of receipt.  
14 Any Party who receives a Notice of Appearance by a Class Member's separate counsel  
15 shall immediately inform and forward a copy of the Notice of Appearance to the other  
16 Party and the Settlement Administrator.

17 **C. Replies to Objections and Papers in Support of Settlement**

18 The Parties may file written responses to objections submitted in accordance with  
19 this Section and may file other papers in support of the Settlement, including motions for  
20 Final Approval, no later than five (5) calendar days before the Final Fairness Hearing.

21 **XII. EFFECT OF FAILURE TO GRANT FINAL APPROVAL**

22 If the Court does not grant Final Approval of the Settlement without material  
23 modification or if the Court's Final Approval order is reversed or materially modified on  
24 appeal, then this Settlement will become null and void and the Lawsuit will resume as in  
25 effect on April 5, 2024 as if no Agreement were reached. Notwithstanding the foregoing,  
26 the Court's decision on the Application for Attorneys' Fees and Costs or an appeal by  
27 Plaintiffs, Class Counsel or Defendants from the Court's decision on the Application for  
28 Attorneys' Fees and Costs shall not delay the effective date of the Settlement nor

1 Defendants' obligations under the Settlement (apart from the obligation to pay attorneys'  
2 fees which shall be modified as set forth above). In the event Defendants appeal from the  
3 Court's decision on the Application for Attorneys' Fees and Costs, Defendants shall post  
4 a bond required by law.

### 5 **XIII. RIGHTS OF APPEAL**

6 This Settlement is without prejudice to the rights of either side to appeal except as  
7 to the Released Claims. Anything to the contrary notwithstanding, neither Named  
8 Plaintiffs, Class Representatives, the Settlement Class Members nor Defendants waive  
9 any appeal rights except as to the Released Claims. Named Plaintiffs, Rule 23 Class  
10 Members, and putative class members reserve the right to appeal from the rulings  
11 regarding Named Plaintiffs' and Rule 23 Class Members' claims for civil penalties under  
12 the AMWA; Named Plaintiffs' and putative class members' claims for overtime under the  
13 AWA, and putative class members' claims for unpaid straight time under the AWA.  
14 Except as to the Released Claims, Defendants are not waiving appeal rights, if any, to  
15 appeal at the appropriate time, any of the Court's rulings on their defenses, including, but  
16 not limited to, the Court's order denying Defendants' motion to amend their answer (Doc.  
17 408), order striking Defendants' affirmative defenses (Doc. 569), and order on summary  
18 judgment (Doc. 593).

### 19 **XIV. MISCELLANEOUS**

#### 20 **A. No Retaliation**

21 Defendants shall not retaliate against any Rule 23 Class Member or Collective  
22 Member for any reason based on their participation in the Lawsuit including on the basis  
23 of the Rule 23 Class Member or Collective Member's participation in the Lawsuit, the  
24 Settlement Class Member's filing of a Claim Form or the Rule 23 Class Member's  
25 determination to opt-out of the Settlement. Defendants shall instruct their managers,  
26 supervisors, and dispatchers to adhere to the Court's Order regarding communications  
27 with Rule 23 Class Members and FLSA Collective Members about this case. Defendants  
28 shall instruct their managers, supervisors, and dispatchers to take no action or make



1 statements intended to induce a Rule 23 Class Member or Collective Member to object to  
2 the Settlement or Class Counsel's Application for Attorneys' Fees and Costs, to exclude  
3 themselves from the Settlement, or to discourage a Rule 23 Class Member from filing a  
4 Claim Form.

5 **B. Court Retains Jurisdiction to Enforce Agreement**

6 The Court shall retain jurisdiction with respect to the implementation and  
7 enforcement of the terms of the Settlement Agreement including administration of all  
8 payments due hereunder to the Settlement Class, to the extent permitted by law, and all  
9 Parties hereto submit to the jurisdiction of the Court for purposes of implementing and  
10 enforcing the Settlement Agreement. Any action to enforce this Settlement Agreement  
11 shall be commenced and maintained only in this Court.

12 **C. Cooperation Clause**

13 The Parties and their attorneys agree to cooperate in good faith to effectuate the  
14 Settlement of the Lawsuit, including securing the Court's approval of the Settlement  
15 Agreement, assisting with the administration of the Settlement in accordance with the  
16 terms of this Agreement, providing information reasonably requested by the other Party  
17 and obtaining Final Approval.

18 **D. Counterparts**

19 This Agreement may be executed in one or more counterparts, each of which shall  
20 be deemed to be an original copy of this Settlement Agreement and all of which, when  
21 taken together, will be deemed to constitute one and the same agreement. The exchange  
22 of copies of this Settlement Agreement and of signature pages by facsimile transmission  
23 or other electronic means will constitute effective execution and delivery of this  
24 Settlement Agreement as to the Parties and may be used in lieu of the original Settlement  
25 Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other  
26 electronic means will be deemed to be their original signatures for any purpose  
27 whatsoever.

28

1 **E. Resolution of Disputes**

2 All disputes relating to the Settlement Agreement, including the Settlement  
3 Administrator’s performance of its duties under the terms of this Settlement Agreement,  
4 will be referred to the Court, if necessary, which will have continuing jurisdiction over  
5 this Settlement until all payments and obligations contemplated by this Settlement  
6 Agreement have been fully and completely performed, regardless of entry of Final  
7 Approval or the pendency of an appeal.

8 **F. Named Plaintiffs’ and Defendants’ Certifications**

9 The Parties hereby certify that:

- 10 a) They have signed this Settlement Agreement voluntarily and knowingly in  
11 exchange for the consideration described herein;
- 12 b) They have been advised by and consulted with counsel before signing this  
13 Settlement Agreement; and
- 14 c) They have been given adequate time to review and consider this Settlement  
15 Agreement and to discuss it with counsel.

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Driver Provider Leasing, LLC

Dated: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

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

Its: \_\_\_\_\_

Innovative Transportation Solutions of Sedona, LLC

Dated: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

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

Its: \_\_\_\_\_

Innovative Transportation Solutions of Tucson, LLC

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

Its: \_\_\_\_\_

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Innovative Transportation Solutions, Inc.  
(Arizona)

Dated: \_\_\_\_\_  
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\_\_\_\_\_

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

Its: \_\_\_\_\_

Innovative Transportation Solutions, Inc.  
(Utah)

Dated: \_\_\_\_\_  
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\_\_\_\_\_

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

Its: \_\_\_\_\_

Innovative Transportation Solutions, LLC

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

Its: \_\_\_\_\_

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Driver Provider Management, LLC

Dated: \_\_\_\_\_  
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\_\_\_\_\_

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

Its: \_\_\_\_\_

Jason Kaplan

Dated: \_\_\_\_\_  
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Kendra Kaplan

Dated: \_\_\_\_\_  
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\_\_\_\_\_

Stephen Kaplan

Dated: \_\_\_\_\_  
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Barbara Kaplan

Dated: \_\_\_\_\_  
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Barry Gross

Dated: \_\_\_\_\_  
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Barbara Gross

Dated:

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RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of May, 2024.

**MARTIN & BONNETT, P.L.L.C.**

**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.**

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*Attorneys for Plaintiffs*