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24 **SUPERIOR COURT OF CALIFORNIA**
25 **COUNTY OF LOS ANGELES**

26 DIANNE SEARLES, an individual, on behalf
27 of herself, and on behalf of all persons
28 similarly situated,

Plaintiff,

vs.

ROBERT HEATH TRUCKING, INC., a
corporation; and Does 1 through 50, Inclusive,

Defendant.

Case No. 19STCV30808
[Action Filed 8/30/2019]
**FIRST AMENDED STIPULATION OF
SETTLEMENT OF CLASS ACTION
AND PAGA CLAIMS, AND RELEASE
OF CLAIMS**

Judge: Hon. Amy D. Hogue
Dept.: 7

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This Stipulation of Class Action Settlement and Release of Claims is entered into by and between Plaintiff DIANNE SEARLES (hereinafter “Plaintiff”), individually and on behalf of the Settlement Class, and Defendant ROBERT HEATH TRUCKING, INC. (hereinafter “Defendant”).

I. DEFINITIONS

- A. “Action” shall mean *Dianne Searles v. Robert Heath Trucking, Inc.*, currently pending in the Superior Court for the County of Los Angeles, Case No. 19STCV30808 filed August 30, 2019.
- B. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class Action and Release of Claims.
- C. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL LAW FIRM, APC (“JCL”), and the attorneys at BLUMENTHAL, NORDREHAUG, BHOWMIK & DE BLOUW, LLP (“BNBD”)
- D. “Class Counsel Award” means the award of attorneys’ fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Settlement Class Members in the Action, consisting of attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount plus costs and expenses in an amount as documented by Class Counsels’ billing statements. Class Counsel Award for attorneys’ fees shall be divided between Class Counsel as follows: 70% to JCL, and 30% to BNBD.
- E. “Class Data” means information regarding Settlement Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall

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include: each Settlement Class Member’s full name; last known address; Social Security Number; start dates and end dates of employment, and number of Workweeks as a Settlement Class Member during the Class Period and email address, if known.

F. “Class Period” and “Covered Period” means the period from August 30, 2015 to September 1, 2020.

G. “Class Representative Service Award” means the amount that the Court authorizes to be paid to Plaintiff, in addition to her Individual Settlement Payment and her Individual PAGA Payment, in recognition of her effort and risk in assisting with the prosecution of the Action and in exchange for executing a General Release of Defendant.

H. “Class Representative” or “Plaintiff” shall mean DIANNE SEARLES.

I. “Court” means the Superior Court for the State of California, County of Los Angeles.

J. “Defendant” shall mean ROBERT HEATH TRUCKING, INC.

K. “Effective Date” means the earliest date, following entry by the Court of an order and judgment finally approving this Settlement, upon which one of the following have occurred: (i) If no objections are made to the settlement and no objectors appear at the hearing for final approval, the date of the Court’s entry of the order granting final approval; (ii) If an objection to the settlement is timely made and/or an objector appears at the hearing for final approval, (a) sixty-one (61) days

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following the Court’s entry of the order granting final approval without the filing of a notice of appeal of the final approval order or judgment; or (b) final affirmance of the final approval order and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all such appeals (including any petition for review, rehearing, certiorari, etc.) such that the final approval order and judgment is no longer subject to further judicial review.

L. “Funding Date” shall mean twenty-one (21) calendar days after the Effective Date and is the date Defendant transfers the Gross Settlement Amount into the QSF in accord with the terms of this Agreement.

M. “Gross Settlement Amount” means Two Hundred Forty-Five Thousand Dollars (\$245,000.00) that Defendant must pay into the QSF on the Funding Date in connection with this Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Payment Award, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs.

N. “Individual PAGA Payment” means the amount payable from Net PAGA Amount to each member of the PAGA Group.

O. “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member.

P. “LWDA Payment” means seventy-five percent (75%) of the PAGA Settlement.

Q. “Net PAGA Amount” means twenty-five percent (25%) of the PAGA Settlement.

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- R. “Net Settlement Amount” or “NSA” means the Gross Settlement Amount, less Class Counsel Award, Class Representative Service Award, PAGA Settlement, and Settlement Administration Costs.
- S. “Notice Packet” includes the following forms to be mailed by the Settlement Administrator: (1) Notice of Class Action Settlement in a form substantially similar to the form attached as Exhibit 1; (2) the Employment Information Sheet, in a form substantially similar to the form attached as Exhibit 2; and (3) Change of Address Form, in a form substantially similar to the form attached as Exhibit 3.
- T. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*
- U. “PAGA Group” means and all individuals who are or previously were employed by Defendant in California as a truck driver and were paid by a piece-rate by the mile during the PAGA Period.
- V. “PAGA Period” means the period from September 3, 2018 to September 1, 2020.
- W. “PAGA Settlement” means Ten Thousand Dollars (\$10,000.00) that shall be allocated from the Gross Settlement Amount for the settlement of claims for civil penalties under PAGA.
- X. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.

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Y. “Payment Ratio” means the respective Workweeks during the Class Period for each Settlement Class Member divided by the sum total Workweeks during the Class Period for all Settlement Class Members.

Z. “PAGA Payment Ratio” means the respective Workweeks during the PAGA Period for each PAGA Group member divided by the sum total of the Workweeks for all members of the PAGA Group during the PAGA Period.

AA. “QSF” means the Qualified Settlement Fund established, designated and maintained by the Settlement Administrator to fund the Gross Settlement Amount.

BB. “Released Claims” shall mean all class claims alleged in the First Amended Complaint or those that could have been alleged based on facts alleged in the First Amended Complaint, , including, Unfair Competition in Violation of Business & Professions Code §§ 17200 *et seq.*; Failure to Pay Minimum Wages in Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1; Failure to Provide Required Meal Periods in Violation of Cal. Labor Code §§ 226.7 and 512; Failure to Provide Required Rest Periods in Violation of Cal. Labor Code §§ 226.7 and 512; Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Labor Code § 226; Failure to Timely Pay Wages When Due in Violation of Cal. Labor Code §§ 201, 202, and 203; and Failure to Reimburse Employees for Required Expenses in Violation of Cal. Labor Code § 2802.

CC. “Released PAGA Claims” shall mean all PAGA claims alleged in the First Amended Complaint which occurred during the PAGA Period. This release extends only to the penalties available through PAGA consistent with *ZB, N.A. v. Superior*

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Court, 8 Cal. 5th 175, 448 P.3d 239 (2019), and specifically excludes any claims, damages, rights or actions for unpaid wages.

DD. “Released Party” means Defendant.

EE. “Response Deadline” means the date forty-five (45) days after the Settlement Administrator mails Notice Packets to Settlement Class Members and the last date on which Settlement Class Members may submit requests for exclusion or objections to the Settlement.

FF. “Settlement” means the disposition of the Action pursuant to this Agreement.

GG. “Settlement Administrator” ILYM, GROUP, INC. The Settlement Administrator establishes, designates and maintains, as a QSF under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendant and any person related to Defendant. ***All accrued interest shall be paid and distributed to the Settlement Class Members as part of their respective Individual Settlement Payment.***

HH. “Settlement Class Members” or “Settlement Class” means all individuals who are or previously were employed by Defendant in California as a truck driver and were paid by a piece-rate by the mile during the Class Period. The “Settlement Class Members” shall not include any person who submits a timely and valid request for

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exclusion as provided in this Agreement. The estimated number of class members is 101 including Plaintiff.

II. “Workweeks”, for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period or PAGA Period, as applicable, that each Settlement Class Member or PAGA Group member worked for Defendant. The Settlement Administrator will calculate the number of Workweeks by calculating the number of days each Settlement Class Member was employed during the Class Period or PAGA Period, as applicable, dividing by seven (7), and rounding up to the nearest whole number. Each Settlement Class Member and PAGA Group member who is a former employee no longer working for Defendant will be assigned two (2) additional Workweeks. However, these additional Workweeks shall be excluded from the total number of Workweeks calculated in Article III.A.1. The estimated number of workweeks for the class period through September 1, 2020 is 5,524.

II. RECITALS

A. On August 30, 2019, the Class Representative filed the Action in the Los Angeles Superior Court styled as a Class Action alleging the following causes of action:

1. Unfair Competition in Violation of Business & Professions Code §§ 17200 *et seq.*;
2. Failure to Pay Minimum Wages in Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1;

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- 3. Failure to Provide Required Meal Periods in Violation of Cal. Labor Code §§ 226.7 and 512;
- 4. Failure to Provide Required Rest Periods in Violation of Cal. Labor Code §§ 226.7 and 512;
- 5. Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Labor Code § 226;
- 6. Failure to Timely Pay Wages When Due in Violation of Cal. Labor Code §§ 201, 20, and 203; and
- 7. Failure to Reimburse Employees for Required Expenses in Violation of Cal. Labor Code § 2802.

B. On November 12, 2019, Class Representative filed a First Amended Complaint to assert an eighth cause of action, in her representative capacity on behalf of the State of California and aggrieved employees for Violations of PAGA.

C. The Class Representative believes she has meritorious claims based on alleged violations of the California Labor Code, and the Industrial Wage Commission Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.

D. Defendant denies all allegations and any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and

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penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times they complied with the California Labor Code and the Industrial Wage Commission Orders. Defendant also denies that class certification is appropriate and only agrees that class requirements are satisfied for settlement purposes.

E. The Class Representative is represented by Class Counsel. Class Counsel conducted an investigation into the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through informal discovery, and reviewing documents and information provided by Defendant pursuant to informal requests for information to prepare for mediation. Defendant produced for the purpose of settlement negotiations certain employment data concerning the Settlement Class, which Class Counsel reviewed and analyzed. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding class certification, and numerous potential appellate issues. Although it denies all allegations and any liability, Defendant is agreeing to this Settlement solely to avoid the inconveniences and cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

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F. The Parties attended a full-day mediation session on March 6, 2020, with (Ret.) William Cahill. Judge Cahill is a well-respected mediator with considerable experience in mediating wage and hour class actions and PAGA actions.

G. At the conclusion of the mediation, the Parties were unable to reach an agreement to settle this Action. Following the mediation, with the assistance of Judge Cahill the Parties reached an agreement to settle this action for the total Gross Settlement Amount of \$245,000.00, plus non-monetary consideration as described herein.

H. The Parties believe that the Settlement is fair, reasonable and adequate. The Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendant.

1. Gross Settlement Amount. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendant will pay the sum of the Individual Settlement Payments, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement, and the Settlement Administration Costs, as specified in this Agreement, equal to the Gross Settlement Amount of Two Hundred Forty-Five Thousand Dollars (\$245,000.00). Defendant shall separately and additionally be responsible

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for Defendant’s share of employer payroll taxes. Other than the Defendant’s share of employer payroll taxes, or as otherwise specified in the Agreement, Defendant shall not be required to pay more or less than the Gross Settlement Amount.

2. Defendant’s Share of Payroll Taxes. The Defendant’s share of employer side payroll taxes is in addition to the Gross Settlement Amount and shall be paid by Defendant within twenty-one (21) calendar days of request by the Settlement Administrator.

3. Workweek Estimate. The Parties negotiated the Gross Settlement Amount based on an estimated 5,524 Workweeks. If, for any reason, at the time of preliminary approval, the number of Workweeks for the Class Period increases more than eight percent (8%) from this estimate to 5,966 Workweeks, (5,534 *8%), then the Gross Settlement Amount shall increase commensurate with the increased number of Workweeks above 5,966 at \$44.35 per Workweek. Defendant shall provide a declaration under oath in support of preliminary approval establishing the total number of Workweeks worked by the Settlement Class Members during the Class Period and the total number of Workweeks worked by the PAGA Group during the PAGA Period.

4. No Reversion. The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant.

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5. Non-Monetary Consideration – Change in Policy. Furthermore, in addition to the Gross Settlement Amount, and in exchange for the releases set forth below, Defendant will change its compensation policies and will compensate its California truck drivers for all non-productive time in accord with California Labor Code Section 226.2, beginning September 1, 2020.

6. Settlement Payment. Defendant shall pay, via wire transfer, the Gross Settlement Amount to the Settlement Administrator on the Funding Date.

B. Release by Settlement Class Members. Upon funding of the Gross Settlement Amount by Defendant, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the Released Party(ies) from the Released Claims for the Class Period.

C. Release by the PAGA Group. Upon funding of the Gross Settlement Amount by Defendant, in exchange for the consideration set forth in this Agreement, the PAGA Group members and the State of California release the Released Party(ies) from the PAGA Released Claims for the PAGA Period.

D. General Release by Plaintiff. Upon funding of the Gross Settlement Amount by Defendant, in exchange for the consideration set forth in this Agreement, Plaintiff, as the class representative, for herself and her heirs, successors and assigns, waive, release, acquit and forever discharge the Released Party from any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on their behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public

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policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California’s Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California’s Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims, rights or benefits that they may have under California Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff is a creditor and/or “releasing party” within the meaning of Civil Code § 1542. Plaintiff may discover claims or facts in addition to, or different from, those

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which they now know or believe to exist, but Plaintiff expressly agree to fully, finally and forever settle and release any and all claims against the Released Party, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant. The Parties further acknowledge, understand and agree that this representation and commitment is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation and commitment.

E. Conditions Precedent: This Settlement will become final and effective only upon the occurrence of all of the following events:

1. The Court enters an order granting preliminary approval of the Settlement;
2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
3. If an objector appears at the final approval hearing, the time for appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires; or, if an appeal is timely filed, there is a final resolution of any appeal from the Judgment and Order Granting Final Approval of Class Action Settlement; and
4. Defendant fully funds the Gross Settlement Amount.

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F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Claims:

1. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
2. The conditional class certification (obtained for settlement purposes) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

G. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Settlement Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Claims, the conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative

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or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

H. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Settlement Class Members are not relying on any statement or representation by the Parties in this regard. Settlement Class Members understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Payments described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Payments.

I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney

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or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which shall include this Settlement Agreement.

K. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representatives, Class Counsel, LWDA and Settlement Class Members; printing, mailing and emailing the Notice Packets to the Settlement Class Members as directed by the Court; establishing and maintaining the website www.RobertHeathTruckingClassAction.com; receiving and reporting the objections and requests for exclusion; calculating and deducting all legally required taxes from Individual Settlement Payments and distributing tax forms; processing and mailing tax payments to the appropriate state and federal taxing authorities; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; posting notice of entry of judgment on its website within five (5) court days of the Court entering an order of final approval and final judgment throughout the check cashing deadline; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall

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keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

L. Notice Procedure.

1. Class Data. No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class Data for purposes of preparing and mailing Notice Packets to Settlement Class Members. Defendant shall verify the total number of Workweeks at the time Class Data is provided to the Settlement Administrator.

2. Notice Packets.

a) The Notice Packet shall contain the Notice of Class Action Settlement in a form substantially similar to the form attached as Exhibit 1. The Notice of Class Action Settlement shall inform Settlement Class Members that they need not do anything in order to receive an Individual Settlement Payment and to keep the Settlement Administrator apprised of their current mailing address, to which the Individual Settlement Payments will be mailed following the Funding Date. The Notice of Class Action Settlement shall set forth the release to be given by all members of the Settlement Class who do not request to be excluded from the Settlement Class in exchange for an Individual Settlement Payment.

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- b) The Notice Packet shall also contain the Employment Information Sheet, in a form substantially similar to the form attached as Exhibit 2, which shall be individualized by inclusion of the Settlement Class Member’s starting and ending dates of employment while paid on a draw during the Settlement Class Period, the number of Workweeks worked during the Class Period, and the estimated amount of their Individual Settlement Payment if they do not request to be excluded from the Settlement. The Settlement Administrator shall use the Class Data to determine Class Members’ Workweeks.

- c) The Notice Packet shall contain the Change of Address Form, in a form substantially similar to the form attached as Exhibit 3.

- d) The Notice Packet’s mailing envelope shall include the following language: “IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE.”

- e) The Claims Administrator shall also establish and maintain a website landing page that will display The Notice of Class Action Settlement at www.RobertHeathTruckingClassAction.com throughout the Response Deadline.

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3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than fourteen (14) calendar days after receiving the Class Data from Defendant, the Settlement Administrator shall mail and email copies of the Notice Packet to all Settlement Class Members via regular First-Class U.S. Mail and electronic mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.

4. Undeliverable Notices. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to any forwarding address provided. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Settlement Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. In addition, if any Notice Packets, which are addressed to Settlement Class Members who are currently employed by Defendant, are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall notify Defendant. Defendant will request

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that the currently employed Settlement Class Member provide a corrected address, and transmit to the Administrator any corrected address provided by the Settlement Class Member. Settlement Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days from the original Response Deadline.

5. Disputes Regarding Individual Settlement Payments. Settlement Class Members will have the opportunity, should they disagree with Defendant’s records regarding the start and end dates of employment while paid on a draw, as stated on their Employment Information Sheet, to provide documentation and/or an explanation to show contrary dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator’s determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Settlement Class Member and the Parties.

6. Disputes Regarding Administration of Settlement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Before any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

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7. Exclusions. The Notice of Class Action Settlement contained in the Notice Packet shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a written request for exclusion by the Response Deadline. The written request for exclusion must state that the Settlement Class Member wishes to exclude himself or herself from the Settlement and (1) must contain the name, address, and the last four digits of the Social Security number of the person requesting exclusion; (2) must be signed by the Settlement Class Member; (3) must be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number; and (4) contain a typewritten or handwritten notice stating in substance: “I wish to opt out of the settlement of the class action lawsuit entitled *Searles v. Robert Heath Trucking, Inc.*, Superior Court of California, County of Los Angeles Number 19STCV30808. I understand that by requesting to be excluded from the settlement, I will receive no money from the Settlement described in this Notice.” The request for exclusion will not be valid if it is not timely submitted, if it is not signed by the Settlement Class Member, or if it does not contain the name and address and last four digits of the Social Security number of the Settlement Class Member. The date of the postmark on the mailing envelope or fax stamp on the request for exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to an Individual Settlement Payment and will not be otherwise bound by the terms of the

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Settlement or have any right to object, appeal or comment thereon. However, any Settlement Class Member that submits a timely request for exclusion that is also a member of the PAGA Group will still receive their pro rata share of the PAGA Settlement, as specified below, and in consideration, will be bound by the Release by the PAGA Group as set forth herein. Settlement Class Members who fail to submit a valid and timely written request for exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Settlement Class Members who have timely submitted written requests for exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Settlement Class to submit requests for exclusion from the Settlement.

8. Objections. The Notice of Class Action Settlement contained in the Notice Packet shall state that Settlement Class Members who wish to object to the Settlement must mail to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline or by offering oral comments at the Final Approval Hearing. The postmark date of mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the case name and number; (2) the

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name of the Settlement Class Member; (3) the address of the Settlement Class Member; (4) the last four digits of the Settlement Class Member’s Social Security number; (4) the basis for the objection; and (5) if the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. Settlement Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Settlement Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Fairness Hearing in order to have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Settlement Class Members who submit a written request for exclusion may not object to the Settlement.

M. Funding and Allocation of the Gross Settlement Amount. Defendant is required to pay the Gross Settlement Amount on or before the Funding Date, plus any employer’s share of payroll taxes as mandated by law within the time specified herein.

1. Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth below.

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a) Calculation of Individual Settlement Payments. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Settlement Class Members. The respective Workweeks for each Settlement Class Member will be divided by the total Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member. Each Settlement Class Member’s Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member’s estimated Individual Settlement Payments. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios.

b) Calculation of Individual PAGA Payments. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all PAGA Group members during the PAGA Period. The respective Workweeks for each PAGA Group member will be divided by the total Workweeks for all PAGA Group members, resulting in the “PAGA Payment Ratio” for each PAGA Group Member. Each PAGA Group member’s PAGA Payment Ratio will

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then be multiplied by the Net PAGA Amount to calculate each estimated Individual PAGA Payment.

c) Allocation of Individual Settlement Payments. For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: 20% as wages; 65% as penalties and 15% as interest.

d) Allocation of Individual PAGA Payments. For tax purposes, Individual PAGA Payments shall be allocated and treated as 100% penalties.

e) Mailing of Settlement Payments. Individual Settlement Payments and Individual PAGA Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' last known mailing address no later than twenty-five (25) calendar days after the Funding Date.

f) Expiration. Any checks issued to Settlement Class Members shall remain valid and negotiable for one-hundred eighty (180) days from the date of their issuance. If a Settlement Class Member does not cash his or her settlement check within 90 days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the 180th day, and invite that Settlement Class Member to request reissuance in the event the check was destroyed, lost or misplaced. In the event an Individual Settlement Payment check has not been cashed within one hundred eighty (180) days, all

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funds represented by such uncashed checks, plus any interest accrued thereon, shall be distributed consistent with California Code of Civil Procedure Section 384 as follows: to The Children’s Advocacy Institute (CAI), founded at the nonprofit University of San Diego School of Law in 1989.

2. Class Representative Service Award. Class Representative will request a Class Representative Service Award of up to Ten Thousand Dollars (\$10,000) for the Class Representative in exchange for the Released Claims and a General Release and for her time, effort and risk in bringing and prosecuting this matter. Defendant does not intend to oppose this request. The Settlement Administrator shall pay the Class Representative Service Award, either in the amount stated herein if approved by the Court or some other amount as approved by the Court, to Plaintiff from the Gross Settlement Amount no later than ten (10) calendar days after the Funding Date. Any portion of the requested Class Representative Service Award that is not awarded to the Class Representative shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for her Class Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on her Class Representative Service Award and shall hold harmless the Released Party from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Award. The Class

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Representative Service Award shall be in addition to Plaintiff’s Individual Settlement Payment as a Settlement Class Member. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Class Representative Service Award. In the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding.

3. Class Counsel Award. Defendant understands a motion by Class Counsel for attorneys’ fees not to exceed one-third of the Gross Settlement Amount, estimated to be at least \$81,666.66, plus costs and expenses supported by Class Counsel’s billing records also payable from the Gross Settlement Amount. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall allocate and pay the Class Counsel Award to Class Counsel from the Gross Settlement Amount no later than five (5) calendar days after the Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel

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shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

4. Mailing of LWDA Payment. The Settlement Administrator shall mail, by registered U.S. Mail or similar, the LWDA Payment to the California Labor and Workforce Development Agency no later than twenty-five (25) calendar days after the Funding Date.

5. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Settlement Administration Costs is \$10,000.00. The Settlement Administrator shall be paid the Settlement Administration Costs no later than twenty-five (25) calendar days after the Funding Date.

N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Class Representative Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement Administration Costs.

1. Declaration by Settlement Administrator. No later than fourteen (14) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff’s motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to

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Settlement Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the number of objections received, the amount of the average Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

N. Defendant's Option to Revoke Settlement. Defendant has the unilateral right to revoke the Settlement and Defendant shall have, in its sole discretion, the option to terminate this Settlement if, after the Response Deadline, the number of Settlement Class Members who submitted timely and valid written requests for exclusion from the Settlement exceeds ten percent (10%) of all Settlement Class Members. If Defendant exercises the option to terminate this Settlement, Defendant shall: (a) provide written notice to Class Counsel within five (5) calendar days after (i) providing the Class Data to the Settlement Administrator or (ii) the Settlement Administrator provides information regarding opt outs (which is to occur no later than fourteen (14) calendar days after the Response Deadline, and (b) pay all Settlement Administration Costs incurred up to the date or as a result of the termination; and the Parties shall proceed in all respects as if this Agreement had not been executed.

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O. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendant to review the Motions for Preliminary and Final Approval, including the Order Granting Final Approval of Class Action Settlement, and Judgment before filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to affect the Court’s approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

P. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement.

Q. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court

R. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

S. Entire Agreement. This Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in this Agreement and its Exhibits.

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T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate Action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of Defendant represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that she is authorized to sign this Agreement and that he/she has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.

V. California Law Governs. All terms of this Agreement and the Exhibits and any disputes shall be governed by and interpreted according to the laws of the State of California.

W. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have

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arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement and all orders and judgments entered in connection with this Agreement.

Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently intend to pursue any claims against the Released Parties, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant, regardless of whether Class Counsel is currently aware of any facts or legal theories upon which any claims or causes of action could be brought against Released Party, including those facts or legal theories alleged in the operative complaint in this Action. The Parties further acknowledge, understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.

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BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this settlement only.

CC. No Admissions by the Parties. Plaintiff has claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 4/21/2021

Dianne Searles

DocuSigned by:

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IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: _____

Robert Heath Trucking, Inc.

Printed Name

Title

[SIGNATURES CONTINUED ON NEXT PAGE]

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IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: _____
Dianne Searles

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: 4/23/2021
Brent Shankle
Robert Heath Trucking, Inc.
Brent Shankle
Printed Name
Vice President
Title

[SIGNATURES CONTINUED ON NEXT PAGE]

1 IT IS SO AGREED AS TO FORM BY COUNSEL:

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3 DATED: 4/22/2021
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JCL LAW FIRM, A.P.C.

By: _____
DocuSigned by:
Jean-Claude Lapuyade
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6 Attorneys for the Named Plaintiff and the Plaintiff
7 Class

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9 DATED: 4/23/2021
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BLUMENTHAL, NORDREHAUG, BHOWMIK &
DE BLOUW, LLP

By: _____
DocuSigned by:
Nicholas De Blouw
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12 Attorneys for the Named Plaintiff and the Plaintiff
13 Class

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15 DATED: 4/23/21
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MEDINA MCKELVEY, LLP

By: _____
[Signature]

17 Attorneys for Defendant
18 Robert Heath Trucking, Inc.

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