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Attorneys for Plaintiff Davit Pitshikyan

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

DAVIT PITSHIKYAN, individually, and on  
behalf of other individuals similarly situated,

Plaintiffs,

v.

DEPENDABLE HIGHWAY EXPRESS, INC.  
California limited liability company, and DOE;  
1-10

Defendants.

**CASE NO. 34-2015-00182832**

(Assigned to Hon. Alan G. Perkins, Dept. 35)

**CLASS ACTION**

**DECLARATION OF CHRISTINA A.  
HUMPHREY, ESQ. IN SUPPORT OF  
PLAINTIFF'S UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
PROVISIONAL CLASS CERTIFICATION**

DATE: December 7, 2016  
TIME: 8:30 a.m.  
DEPT: 54

Complaint Filed: August 10, 2015

1 I, CHRISTINA A. HUMPHREY, declare as follows:

2 1. I am an attorney at law duly licensed to practice law before all of the courts of the  
3 State of California. I am a partner in the law firm of Humphrey Rist, LLP. I have personal  
4 knowledge of all the matters set forth herein, unless otherwise specifically stated, and if called as a  
5 witness I could and would competently testify to the following.

6 2. For the last thirteen years as a former partner at Marlin & Saltzman, and now recently  
7 as a co-owner and partner at Humphrey & Rist LLP, I have been responsible for the handling of all  
8 facets of class action and other complex litigation, from pre-filing investigation through trial and  
9 appeal. At my former firm I successfully litigated cases involving numerous alleged violations of  
10 various employment laws and practices, including misclassification of independent contractor and  
11 off-the-clock/unpaid time allegations such as those presented herein, as well as unpaid vacation  
12 payment, reimbursement of expenses, improper wage statement and other wage and hour violations.  
13 I have also successfully litigated numerous claims of misclassifications under the executive,  
14 administrative, outside sales, and other overtime exemptions arising out of California and federal  
15 law. The plaintiff side employment cases that I have either been involved in or been responsible for  
16 directly, have resulted in the payment by defendants of hundreds of millions of dollars in  
17 settlements. Examples of some of the many cases I have been involved in or directly handled  
18 include:

19 (1) **Gutierrez vs. State Farm**, Los Angeles Superior Court. Class action seeking  
20 overtime compensation for insurance claims adjusters employed by defendant in the  
21 State of California. Plaintiffs' counsel. Certification granted, and then summary  
22 adjudication as to liability granted in favor of the class. Case settled in 2004 for  
23 \$135 million, with Final Approval granted and no objections filed.

24 (2) **Bednar vs. Allstate Insurance Company**, Los Angeles Superior Court. Class  
25 action seeking overtime compensation for insurance claims adjusters employed by  
26 defendant in the State of California. Plaintiffs' counsel. Certification granted, and  
27 then summary adjudication as to liability granted in favor of the class. Case settled  
28

1 in 2005 for \$120 million. Final Approval granted and no objections filed.

2 (3) **In re: Wal-Mart Wage and Hour Litigation**, United States District Court for the  
3 Northern District of California. Class action seeking unpaid vacation pay and  
4 penalties. Case has settled for maximum payment of \$86 million. Final approval  
5 granted.

6 (4) **Roberts vs. Coast National Insurance**, Orange County Superior Court. Class action  
7 seeking overtime compensation for insurance claims adjusters employed by  
8 defendant in the State of California. Plaintiffs' counsel. Certification granted, and  
9 then the matter was tried to binding arbitrator. Case settled for in excess of \$18  
10 million during arbitration.

11 (5) **CNA Class Action Litigation**, Los Angeles Superior Court Class. Class action  
12 seeking overtime compensation for insurance claims adjusters employed by  
13 defendant in the State of California. Plaintiffs' counsel. Case settled in 2005 for  
14 \$33 million.

15 (6) **H & R Block Litigation**, United States District Court for the Northern District of  
16 California. Class certified, and settlement reached prior to trial. Total settlement  
17 was \$35 million.

18 (7) **Hoyng v. AON**, Los Angeles County Superior Court. Class action seeking overtime  
19 compensation for certain employees employed by defendant third party administrator  
20 in the State of California. Plaintiffs' counsel. Certification granted. Case settled for  
21 \$10.5 million.

22 (8) **Parris vs. Lowe's Home Improvement**, Los Angeles Superior Court. Class action  
23 seeking payment of "off the clock" hours worked by all hourly employees of Lowe's  
24 in the State of California. Plaintiffs' counsel. Case ordered certified by Order of the  
25 Court of Appeals, Second Appellate District, California, on reversal of trial court  
26 order denying certification. Case settled for \$29.5 million.

27 (9) **Fulton vs. Cisco Systems, Inc.**, Orange County Superior Court. Wage and hour  
28

litigation seeking overtime and related compensation. Plaintiffs' class counsel.  
Settled for \$6.7 million.

(10) **Van Heyn vs. WMC Mortgage Corp.**, Los Angeles Superior Court. Action for violation of Labor Code §§ 2802 and 2804, etc. for failure to reimburse employees for business expenses. Plaintiffs' counsel. Case settled for \$3 million.

(11) **In re: JB Hunt Transport Class Action**, United States District Court for the Central District of California. Class counsel for certified class. Plaintiffs' counsel. Action seeks unpaid regular time and related claims.

(12) **Poston vs. Marcus & Millichap Real Estate Investment**, Los Angeles Superior Court. Action for violation of Labor Code §§2802 and 2804, etc. for failure to reimburse employees for business expenses. Plaintiffs' Class counsel. Case settled for \$1,340,000.

(13) **Dotson vs. Royal SunAlliance**, Orange County Superior Court. Class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Plaintiffs' counsel. Case settled in 2005 for \$12.3 million.

(14) **Harris v. Vector Marketing Corp.**, United States District Court, Northern District of California. Plaintiffs' Class counsel. Final approval of \$13 million settlement granted.

(15) **Woods v. Vector Marketing Corp.**, United States District Court, Northern District of California. Plaintiffs' Class Counsel. Preliminary Approval of \$6.75 million dollar settlement granted.

(16) **McCowen v. Trimac Transportation**, United States District Court, Northern District of California. Plaintiffs' Class Counsel. Certified Class Action.

(17) **Berner vs. Kraft Foods, Inc.**, USDC, Central District. Counsel for Plaintiffs in "off the clock" action, plus meal and break time. Case settled.

(18) **Rounsavall vs. Countrywide Home Loans, Inc.**, Los Angeles Superior Court.

1           Lead counsel in class action claiming mis-classification of computer driven  
2           underwriting positions. Case settled for \$15 million and all settlement funds have  
3           been distributed.

4           (19) **Ortmann vs. New York Life Insurance**, USDC, Central District. Class action  
5           involving alleged failure to pay minimum wages to employed insurance agents,  
6           failure to reimburse, etc. Matter settled for \$10 million.

7           (20) **Bickley v. Schneider Logistics**, United States District Court, Northern District of  
8           California. Plaintiffs' Class Counsel. Final Approval of \$28 million settlement  
9           granted.

10          (21) **Holmby v. Cardinal Logistics**, United States District Court, Northern District of  
11          California. Plaintiffs' Class Counsel. Final Approval of \$2 million settlement  
12          granted.

13          3.       I have co-chaired trials in class action cases in superior court and in arbitration. My  
14 partner, Thomas Rist, has also tried many cases to verdict. Our firm concentrates its efforts on areas  
15 of litigation, with a great emphasis on Plaintiff and class action and complex litigation.

16          4.       Our firm has worked with our co-counsel on this case, as well as with the  
17 representative Plaintiff herein, Davit Pitshikyan, to protect the interests of the class and the Plaintiff.  
18 We are familiar with the law as it applies to the legal and factual issues relevant to this matter. My  
19 former firm and new firm have dedicated the necessary personnel and resources to fully develop the  
20 case, and in doing so the firm was also fully enabled to evaluate the settlement risks and benefits for  
21 the case.

22          5.       All of the factual representations made in the accompanying Unopposed Motion for  
23 Preliminary Approval of Class Action Settlement and Provision Class Certification are true to the  
24 best of my knowledge, unless otherwise specifically set forth.

25       **Procedural History**

26          6.       On August 10, 2015, Named Plaintiff, filed a putative class action complaint against  
27 Defendant in the Sacramento Superior Court, State of California, entitled *Davit Pitshikyan v.*  
28

1 *Dependable Highway Express, Inc., et. al.*, Case No. 34-2015-00182832 (the “Action”), alleging  
2 that Defendant misclassified him and all others similarly situated in California as independent  
3 contractors, and owed wages, reimbursement of expenses, and penalties as a result of the  
4 misclassification.

5 7. Plaintiffs alleged the following causes of action: Declaratory Relief (First Cause of  
6 Action); Reimbursement of Business Expenses, Unlawful Deductions and/or Prohibited Cash Bond  
7 (Cal. Labor Code §§221, 223, 406, 2800, and 2802(a) and IWC Wage Order No. 9, §8) (Second  
8 Cause of Action); Failure to Pay Minimum Wage and Overtime for All Hours Worked (Cal. Lab.  
9 Code §§ 1194, 1197 and IWC Wage Order No. 9, §§4, 7) (Third Cause of Action); Payment of  
10 Wage Below Designated Rate for All Hours Worked (Cal. Lab. Code §§221 and 223) (Fourth Cause  
11 of Action); Quantum Meruit/Unjust Enrichment (Fifth Cause of Action); Failure to Provide Meal  
12 Periods (Cal. Lab. Code §§226.7, 512, 516 and IWC Wage Order No. 9, §11) (Sixth Cause of  
13 Action); Failure to Provide Rest Periods (Cal. Lab. Code §§226.7, 512 and IWC Wage Order No. 9,  
14 §12) (Seventh Cause of Action); Failure to Timely Furnish Accurate Itemized Wage Statements  
15 (Cal. Labor Code §226(a) and IWC Wage Order No. 9, §7) (Eighth Cause of Action); Waiting Time  
16 Penalties (Cal. Lab. Code §§201-203) (Ninth Cause of Action); Unfair and Unlawful business  
practices (Cal. Bus. & Prof. Code § 17200 *et seq.*) (Tenth Cause of Action).

17 8. On September 17, 2015, Defendant filed its Answer to the Complaint, denying the  
18 allegations set forth in the Complaint and alleging a number of affirmative defenses.

19 9. On June 2, 2016, the Named Plaintiff sent a letter to the California Labor &  
20 Workforce Development Agency (“LWDA”) informing it that he intended to pursue penalties  
21 pursuant to the Private Attorney General Act (“PAGA”) for the same violations alleged in the  
22 Complaint filed on August 10, 2015, in this Action. More than thirty-three days have passed since  
23 the date Plaintiff Pitkshikyan sent his correspondence to the LWDA, and the LWDA never  
24 responded to Plaintiff’s correspondence. Therefore, the jurisdictional prerequisites have been met for  
25 the Named Plaintiff to file a first amended complaint in this Action asserting an Eleventh Cause of  
26 Action seeking civil penalties under PAGA (Cal. Lab. Code §2698 *et seq.*) and pleading exhaustion  
27 of administrative remedies.  
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1 **Discovery, Investigation, and Mediation**

2 10. Class Counsel has conducted a thorough investigation of the facts in the Action and  
3 has diligently pursued an investigation of Class Members' claims against Defendant. On or about  
4 January 20, 2016, the Parties agreed to send a Belaire-West letter to the Putative Class Members in  
5 furtherance of investigation of the action, and as a compromise as to Named Plaintiff's request for  
6 the class list in discovery. As a result, Plaintiff's counsel was able to interview other drivers  
7 contracted with DHE.

8 11. Around the beginning of March, once the Belaire-West process was completed, the  
9 claims administrator produced the class list to Plaintiff. The parties also agreed to go to mediation  
10 sometime in March. As part of the agreement to attend mediation, the Defendant agreed to produce  
11 a number of documents and data and Plaintiff in turn agreed to produce his documents. Defendant  
12 produced, and Plaintiff's Counsel reviewed DHE's relevant policies; class member data including  
13 contract dates, category of driver, type of truck driven, number of days worked, deductions from  
14 pay, time sheet entries; all versions of driver handbooks, lease agreements, independent contractor  
15 agreements, and Plaintiff's personnel file and dispatch data. Plaintiff in turn produced the documents  
16 in his possession to Defendant. Plaintiffs' counsel expended significant time and resources  
17 reviewing such documents to build a damage analysis.

18 12. Class Counsel also investigated documents and other forensic evidence relating to  
19 Defendant's financial condition at Defense Counsel's office, and consulted an accountant expert  
20 regarding Defendant's financial condition. Class Counsel also interviewed several class members  
21 who contracted with Defendant in preparation for the mediation.

22 13. After the above comprehensive document exchange and review had been completed,  
23 the Parties participated in an all-day mediation session in an attempt to resolve the case informally  
24 before any additional protracted litigation. On June 27, 2016, the Parties held an all-day mediation in  
25 San Francisco with mediator Mark Rudy, a well-respected attorney-mediator specializing in wage  
26 and hour class actions. At the conclusion of the mediation, the Parties agreed to resolve all of the  
27  
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1 allegations raised in the complaint. The terms of the Parties' agreement were then memorialized in a  
2 "Memorandum of Understanding," which the parties finalized and executed on June 27, 2016.

3 14. The parties continued to negotiate the terms of the full Agreement, and on November  
4 5, 2016, the Parties fully executed the Agreement. See Joint Stipulation for Class Action Settlement  
5 and Release of Claims ["Agreement"], attached as Exhibit A hereto.

6 **The Settlement Valuation**

7 15. The settlement represents a significant recovery for all the Settlement Class  
8 Members. Most notably, due in large part to this Action, Defendant has begun to and intends to  
9 continue to expand its employee driver division in California, hiring many of the Class Members in  
10 those positions and substantially curtailing its owner-operator division in California as a result.  
11 Thus, this lawsuit has brought significant positive change.

12 16. Further, the average recovery per class member is significant, especially in light of  
13 the size of the Defendant and its financial condition. As discussed above, even after estimated  
14 attorneys' fees and costs, proposed Service Award, the PAGA allocation, and the estimated costs of  
15 settlement administration, an estimated amount of \$1,605,000 will be distributed to Settlement Class  
16 Members. Thus, the average recovery per person, after fees and costs, is \$4105. Settlement Class  
17 Members with longer terms of service will receive two to three times this amount, and perhaps  
18 more. This will bring substantial relief to the class, which is largely composed of workers who, as a  
19 practical matter, lack the means to bring individual suits to assert their rights. I believe that drivers  
20 would not fare substantially better by litigating individually.

21 17. The most significant damages claim in this case was reimbursement of expenses  
22 pursuant to Labor Code §2802. The Named Plaintiff and many putative class members provided  
23 trucks, partially paid for fuel, insurance, and miscellaneous expenses, in performing services for  
24 Defendant. California Labor Code section 2802(a) provides: "An employer shall indemnify his or  
25 her employee for all necessary expenditures or losses incurred by the employee in direct  
26 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the  
27 employer...." While Plaintiff believed that his claims were strong under Labor Code §2802, the  
28



1 parties disputed whether or not all categories of expenses could be recovered. The most significant  
2 expense for most drivers, the truck payments, was excluded as a recoverable expense in at least three  
3 cases. See *Villalpando v. Excel Direct, Inc.* 2015 WL 5179486, \*37-38 (N.D. California Sep. 3,  
4 2015); *Smith v. Cardinal Logistics Mgmt. Corp.*, 2009 WL 2588879 (N.D. Cal. Aug. 19, 2009);  
5 *Estrada v. FedEx Ground Package System, Inc.*, 154 Cal. App. 4th 1 (2007).

6 18. Moreover, Defendant disputed whether or not expenses such as cargo insurance,  
7 physical damage insurance, occupational accident insurance, license fees, maintenance and repair,  
8 and parking rental, were recoverable because they were allegedly optional for drivers as opposed to  
9 “reasonable and necessary” under the standard for reimbursement set forth in *Gatusso v. Harte-*  
10 *Hanks Shoppers, Inc.*, 42 Cal.4<sup>th</sup> 554. Defendant further argued that said expenses were accounted  
11 for in the compensation paid to drivers for their services. Thus, the recovery of expenses in this case  
12 was highly contested, and would likely have been the subject of motions before this Court, and  
13 possibly an appeal.

14 19. Moreover, Defendant produced data for the mediation demonstrating that the drivers  
15 drove trucks exceeding 10,000 lbs and in many instances crossed state lines, which would have  
16 potentially rendered them ineligible for overtime under California’s motor carrier exemption.<sup>1</sup> In  
17 fact, many of the issues presented in the case law regarding independent contractor classification  
18 status, class-wide proof of damages by just and reasonable inference in wage and hour cases, and  
19 preemption of wage and hour claims brought by individuals working in the transportation industry,  
20 among other issues, are precarious. For example, in late 2015, it appeared that a proposed  
21 amendment to the recent House Transportation Bill would overturn *Dilts* and other important rulings  
22 protecting the rights of truck drivers and other employees performing work in interstate commerce.  
23 See Amendment to Rules Committee Print 114-32, proposed by Representative Jeff Denham of  
24 California. While the proposed amendment was not ultimately used in the final version of the bill, it  
25 represents the general risk of the law changing over time. *Id.* at 57. By the same token, the prospect

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26  
27 <sup>1</sup> Of course, the Court would have to determine that they were misclassified as independent  
28 contractors first for the overtime claim to be considered.

1 that the Supreme Court might favor the First Circuit's approach to misclassification cases over  
2 authorities such as the above-referenced Ninth Circuit decisions in *Dilts*, *Alexander*, and *Ruiz* raised  
3 additional concerns. *See* Coakley, 769 F.3d 11. Thus, the longer this case is litigated, the more  
4 subject it is to changing circumstances which could render the entire case void.

5         20. Given that the class members in this case are primarily low wage workers for whom  
6 receiving speedy remuneration is particularly important, the potential years of delayed recovery is a  
7 significant concern, especially in light of the financial circumstances of a smaller privately-owned  
8 trucking company such as DHE. Weighed against the risks of continued litigation, and the  
9 importance of the employment rights and a speedy recovery to plaintiff class members, the totality  
10 of relief provided under the proposed settlement is more than adequate and well within the range of  
11 reasonableness. As such, in Plaintiffs' counsel's opinion, this settlement is a fair, adequate, and  
12 reasonable resolution of the claims in this lawsuit.

13 **Adequacy of the Settlement**

14         21. Given my experience as a class action litigator, with a strong emphasis in  
15 employment litigation, I believe that the Settlement is a fair and adequate compromise of the  
16 monetary relief claims that Plaintiff and the Class Members have raised in this case. Based on the  
17 investigation conducted in the case, our analysis of the data produced by Defendant, and the  
18 application of appropriate litigation, appeal and delay risks and factors, we determined that the  
19 settlement was fair, reasonable and adequately reflects the settlement value of the case.

20         22. Specifically, Plaintiff's counsel obtained a significant amount of information,  
21 including independent contractor history data, documents relating to Defendant's compensation  
22 policies and procedures, time data, deduction data, and other corporate policies and procedures  
23 relevant to the issues underlying this case. Counsel for the parties also held conferences regarding  
24 the data and documents produce. Plaintiff's counsel held conferences between them and their expert,  
25 and Plaintiff's counsel calculated potential damages and shared the analysis with defense counsel.  
26 Plaintiff's counsel also investigated all applicable law, as applied to the facts discovered, regarding  
27 the alleged claims in the action.

1           23.     Based on my participation in the settlement negotiations, which were extensive and  
2 conducted in good faith and at arm's length between attorneys with substantial experience litigating  
3 class actions and wage and hour cases, and supervised by an experienced and well-regarded  
4 mediator, Mark Rudy, I attest that the Settlement was the product of a non-collusive settlement  
5 process.

6           24.     I am confident that the settling Parties evaluated and considered all alternatives in  
7 reaching their settlement decisions and now urge this Court to grant preliminary approval.

8     **Attorneys' Fees and Costs**

9           25.     While a formal application for attorneys' fees and costs will be presented at the time  
10 of the Final Fairness Hearing, it is our practice to make, at a minimum, a preliminary disclosure to  
11 the Court at the time of request for Preliminary Approval so that the Court is fully aware of the  
12 nature of all agreements between the parties, including, in this case, Defendants' agreement not to  
13 object to the fee application described in the accompanying Application. Defendant agreed not to  
14 object to 33% once an agreement was reached in principal as to the direct class settlement benefits  
15 and Settlement Sum.

16          26.     In connection with this action, Class Counsel will be requesting a fee equal to thirty-  
17 three percent (33%) of the total non-reversionary settlement amount which will be available for  
18 distribution to the class members. The settlement will be effectuated by the simple act of mailing  
19 settlement checks to all class members who remain in the class, which in turn is effected by the self-  
20 executing act of simply doing nothing (i.e., not opting out) when the Notice is received. The only  
21 persons who will not be mailed a check will be the few people who may choose to affirmatively opt  
22 out of the settlement. The parties believe this will be the most accurate and reasonably achievable  
23 method for distribution of the Net Settlement Fund.

24          27.     Given all these factors, the moving party requests that the Court approve of the Notice  
25 of Settlement containing a notice to the class members that the Class Counsel will be requesting a  
26 fee of thirty-three (33%) of the settlement, so that the class members may be afforded the  
27  
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1 opportunity to comment on the same, if they so desire, and then the Court can decide on the issue at  
2 the Final Fairness Hearing.

3 28. Finally, in connection with the prosecution of this action, Class counsel collectively  
4 estimate that they have incurred no more than \$25,000 in costs (including costs anticipated during  
5 the approval process). At the Final Fairness Hearing, Counsel will provide an accounting of those  
6 costs for the benefit of the Court and the class members. At this time, it is requested that the Notice  
7 to be issued on Preliminary Approval also be permitted to contain a notice of this request for  
8 reimbursement.

9 **Plaintiff Adequately Represents the Settlement Class**

10 29. Mr. Pitshikyan was a driver formerly contracted with Defendant.

11 30. The settlement provides that Plaintiff's Counsel will move the Court for an award of a  
12 \$15,000.00 incentive payment to Named Plaintiff, who served in this litigation as a very active  
13 liaison between counsel and the class members. Named Plaintiff further assisted his counsel with the  
14 investigation of the class claims, including producing documents, participating in numerous  
15 meetings and telephone conferences, and providing information to assist counsel with the evaluation  
16 of the claims. Named Plaintiff has not tried to leverage a class action for some personal agenda or  
17 gain and agreed to put class members' interests first and cooperate diligently as part of the agreement  
18 to representation.

19 31. Plaintiff risked intrusive discovery by engaging in this lawsuit, and the potential  
20 payment of employer costs in the event that the case proved unsuccessful. In the experience of Class  
21 Counsel, the typical enhancement award in wage and our class actions ranges from approximately  
22 \$5,000 to \$30,000, although some awards are higher depending on the maximum recovery in the  
23 class. Given the active involvement of Plaintiff, and the favorable recovery obtained for class  
24 members, Plaintiffs' counsel ask that the Court approve that the Notice of Settlement include the  
25 notification of a request for an incentive award of \$15,000.00. As with the fee request discussed  
26 above, this will afford the class members the opportunity to comment on the same, if they so desire,  
27 prior to the Court ruling on the request at the Final Fairness Hearing.

1 **Claims Administration**

2 32. The parties have agreed to retain ILYM Group, Inc., as the Claims Administrator in  
3 the case. ILYM Group, Inc. has rendered class action administration services in regard to several  
4 settlements. ILYM Group, Inc. has provided a not-to-exceed price of \$15,000 for all services  
5 required to effectuate this settlement, assuming that preliminary approval is granted by the Court. In  
6 this declarant's extensive experience in effecting settlements in this field, this proposal is extremely  
7 reasonable for the services required.

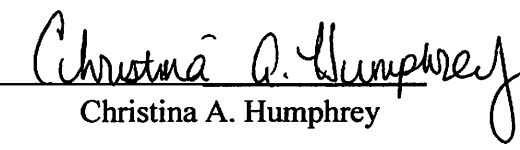
8 **Settlement Documents**

9 33. Attached hereto as Exhibit A is a true and correct copy of the Settlement Agreement  
10 signed by the parties. The proposed Notice of Settlement is attached as Exhibit "2" and the Class  
11 Member Information Sheet is attached to the Settlement Agreement as Exhibit "3." The proposed  
12 Notice apprises the class members of their rights under the settlement and provides an estimate of  
13 each person's approximate share of the recovery, assuming that the Court approves at the final  
14 fairness hearing the various requests for fees, costs, incentive award and such. The Notice also  
15 provides appropriate and adequate information as to the value of the overall settlement, the terms of  
16 the settlement, the amount of attorneys' fees and costs that will be requested, the amount of the  
17 enhancement that will be requested for the Plaintiff, as well as the class members' right to object or  
18 to opt-out of the settlement and/or dispute the allocation of their share of the settlement.

19 34. The proposed First Amended Complaint is attached to the Settlement Agreement as  
20 Exhibit "1."

21 I declare under penalty of perjury under the laws of the United States of America and of the  
22 State of California that the foregoing is true and correct.

23 This declaration is executed on November 10, 2016, at Santa Barbara, California.

24   
25 Christina A. Humphrey  
26  
27  
28

# Exhibit A

**HUMPHREY & RIST, LLP**

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*(Additional Attorneys for Defendant on next page)*

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**COUNTY OF SACRAMENTO**

DAVIT PITSHIKYAN, individually and on  
behalf of others similarly situated,

Plaintiff,

v.

DEPENDABLE HIGHWAY EXPRESS,  
INC., a California Corporation, and DOES 1  
through 25, inclusive,

Defendants.

Case No.: 34-2015-00182832

**STIPULATION OF SETTLEMENT AND  
RELEASE**

**Additional Attorneys for Defendants:**

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1 This Stipulation of Settlement and Release (“Agreement”) is entered into by and between  
2 plaintiff Davit Pitshikyan (“Named Plaintiff”), individually and on behalf of the Putative Class  
3 Members defined below (collectively with Named Plaintiff, “Plaintiffs” or “Class Members”), and  
4 defendant Dependable Highway Express, Inc. (“Defendant”), subject to the approval of the Court.  
5 Named Plaintiff and Defendant collectively are referred to herein as the “Parties.”

6 **1. RECITALS**

7 1.1 On August 10, 2015, Named Plaintiff, filed a putative class action complaint against  
8 Defendant in the Sacramento Superior Court, State of California, entitled *Davit Pitshikyan v.*  
9 *Dependable Highway Express, Inc., et. al.*, Case No. 34-2015-00182832 (the “Action”), alleging that  
10 Defendant misclassified him and all others similarly situated in California as independent contractors,  
11 and owed wages, reimbursement of expenses, and penalties as a result of the misclassification.

12 1.2 On September 17, 2015, Defendant filed its Answer to the Complaint, denying the  
13 allegations set forth in the Complaint and alleging a number of affirmative defenses.

14 1.3 On or before January 20, 2016, the Parties agreed to send a Belaire-West letter to the  
15 Putative Class Members in furtherance of investigation of the action, and as a compromise as to  
16 Named Plaintiff’s request for the class list in discovery.

17 1.4 On June 2, 2016, the Named Plaintiff sent a letter to the California Labor & Workforce  
18 Development Agency (“LWDA”) informing it that he intended to pursue penalties pursuant to the  
19 Private Attorney General Act (“PAGA”) for the same violations alleged in the Complaint filed on  
20 August 10, 2015, in this Action. More than sixty-three days have passed since the date Plaintiff  
21 Pitshikyan sent his correspondence to the LWDA, and the LWDA never responded to Plaintiff’s  
22 correspondence. Therefore, the jurisdictional prerequisites have been met for the Named Plaintiff to  
23 file a first amended complaint in this Action.

24 1.5 Plaintiff Pitshikyan will, contemporaneous with the filing of this Agreement, file a  
25 first amended complaint in this Action for settlement purposes only (the “First Amended Complaint”  
26 or “Operative Complaint”) adding his claims pursuant to the PAGA. A true and correct copy of the  
27 First Amended Complaint is attached hereto as **Exhibit 1**. In the event the Court does not enter an  
28 order granting final approval of the Settlement or the Settlement does not become Final (as defined in

Paragraph 2.12) for any reason, the First Amended Complaint, which was agreed to for settlement purposes only, shall be stricken from the record in its entirety and will have no force and/or effect of any kind whatsoever.

1.6 Class Counsel has conducted a thorough investigation of the facts in the Action and has diligently pursued an investigation of Class Members' claims against Defendant. Plaintiff and Defendant have engaged in substantial investigation in connection with the Action, including the informal exchange of a large volume of information regarding the claims asserted in the Action and other relevant issues. Defendant produced, and Class Counsel reviewed, relevant policies, settlement sheets, payroll information for the Named Plaintiff and Class Members, wage statements, and other documents related to the Class Members' time with Defendant. Class Counsel also investigated documents and other forensic evidence relating to Defendant's financial condition. Class Counsel also interviewed several Class Members who contracted with Defendant in the state of California during the Class Period.

1.7 On June 27, 2016, the Parties held an all-day mediation with mediator Mark Rudy, at the conclusion of which the Parties agreed to resolve all of the allegations raised in the complaint referenced in Paragraph 1.1 above, including the Operative Complaint.

1.8 The Parties have entered into this Settlement solely in order to reduce the risks and costs of further litigation, and to avoid further business distractions.

1.9 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, including all allegations made or that could have been made based upon the factual allegations in the Operative Complaint and other pleadings described herein. Defendant further contends that, for any purpose other than settlement, this Action is not appropriate for class treatment. Among other things, Defendant contends that it complied in good faith with all provisions of California and federal law including, but not limited to, by properly classifying its independent contractor drivers, paying Class Members for all hours worked in amounts that exceed the minimum wage, providing Class Members with accurate, itemized wage statements in compliance with California Labor Code Section 226, providing Class Members with meal and rest breaks as required

under California law, and properly paying Class Members all wages due each pay period and at the termination of their employment.

1.10 Based on the investigation summarized above, Class Counsel are of the opinion that the Settlement on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, unresolved legal issues that could have a material impact on the outcome of the Action, and numerous potential appellate issues. The Parties recognize that the issues presented in the Action are likely only to be resolved after extensive and costly pretrial proceedings, including a dispute as to whether any of the claims asserted can be certified as a class action, and that further litigation will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The Parties agree that they have taken into account the risk and uncertainty of the outcome inherent in any complex litigation of this nature.

1.11 It is the intention of the Parties and the objective of this Agreement to avoid the costs of further litigation, trial and appeals, and to settle and dispose of, fully and completely and forever, the claims released herein and described below, on the terms set forth herein.

## **2. DEFINITIONS**

As used in this Agreement, the terms set forth in this Section 2 shall have the meanings ascribed to them below.

2.1 **Action.** “Action” means the above-captioned action entitled *Davit Pitshikyan v. Dependable Highway Express, Inc., et. al.*, Case No. 34-2015-00182832, currently pending in Sacramento Superior Court, State of California.

2.2 **Agreement.** “Agreement” means this Stipulation of Settlement and Release, including Exhibits 2 and 3 referred to herein and attached hereto.

2.3 **Allocations.** “Allocations” means the amount to be paid from the Net Settlement Fund to the Settlement Class Members, which shall be calculated as provided in Section 4.5 of this Agreement.

2.4 **Claims.** “Claims” means the claims in the Action, namely, for Declaratory Relief (First Cause of Action); Reimbursement of Business Expenses, Unlawful Deductions and/or

1 Prohibited Cash Bond (Cal. Labor Code §§221, 223, 406, 2800, and 2802(a) and IWC Wage Order  
2 No. 9, §8) (Second Cause of Action); Failure to Pay Minimum Wage and Overtime for All Hours  
3 Worked (Cal. Lab. Code §§ 1194, 1197 and IWC Wage Order No. 9, §§4, 7) (Third Cause of  
4 Action); Payment of Wage Below Designated Rate for All Hours Worked (Cal. Lab. Code §§221 and  
5 223) (Fourth Cause of Action); Quantum Meruit/Unjust Enrichment (Fifth Cause of Action); Failure  
6 to Provide Meal Periods (Cal. Lab. Code §§226.7, 512, 516 and IWC Wage Order No. 9, §11) (Sixth  
7 Cause of Action); Failure to Provide Rest Periods (Cal. Lab. Code §§226.7, 512 and IWC Wage  
8 Order No. 9, §12) (Seventh Cause of Action); Failure to Timely Furnish Accurate Itemized Wage  
9 Statements (Cal. Labor Code §226(a) and IWC Wage Order No. 9, §7) (Eighth Cause of Action);  
10 Waiting Time Penalties (Cal. Lab. Code §§201-203) (Ninth Cause of Action); Unfair and Unlawful  
11 business practices (Cal. Bus. & Prof. Code § 17200 *et seq.*) (Tenth Cause of Action); and Civil  
12 Penalties under the Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §2698 *et. seq.*)  
13 (Eleventh Cause of Action).

14       **2.5 Class Members.** “Class Members” means all current and former California-based  
15 truck drivers for Defendant from August 10, 2011, through the date notice is mailed to class  
16 members, who were classified by Defendant as “independent contractors.”

17       a. “California-based” refers to Drivers:

18               i. who had a residential address in California at any time during the Class Period;  
19               and/or

20               ii. who were assigned or associated with any warehouses and/or service centers in  
21               California at any time during the Class Period.

22       b. The phrase “assigned or associated with any warehouses and/or service centers”  
23 includes any and all Drivers listed in Defendants’ database in connection with a warehouse or service  
24 center.  
25

26       **2.6 Class Notice.** “Class Notice” means the Notice of Proposed Class Action Settlement  
27 and Final Approval Hearing to be mailed to Class Members by the Settlement Administrator. The  
28 Class Notice shall be substantially in the form of **Exhibit 2** to this Agreement and shall be

1 accompanied by a Class Member Information Sheet substantially in the form of **Exhibit 3** to this  
2 Agreement.

3       2.7     **Class Period or Class Periods.** “Class Period” means the time period from August  
4 10, 2011, through the date notice is mailed to Class Members.

5       2.8     **Complaints.** “Complaints” means the Class Action Complaint filed in the Action on  
6 August 10, 2015, and the First Amended Complaint the parties have agreed to file, attached hereto as  
7 **Exhibit 1.**

8       2.9     **Court.** “Court” means Sacramento Superior Court, State of California, Dept. 35.

9       2.10    **Defendant.** “Defendant” means defendant Dependable Highway Express, Inc.

10      2.11    **Defendant’s Counsel.** “Defendant’s Counsel” means Scopelitis, Garvin, Light,  
11 Hanson, & Feary.

12      2.12    **Effective Date.** “Effective Date” means when the Settlement is considered “Final.”  
13 For purposes of this Agreement, “Final” means (i) in the event that there were no timely and valid  
14 objections filed, or any timely and valid objections have been withdrawn, then the date of the Court’s  
15 Final Approval Order approving the Settlement; or, (ii) in the event that one or more timely and valid  
16 objections has/have been filed and not withdrawn at the time the Final Approval Order is entered,  
17 then upon the passage of the applicable date for an objector to seek appellate review of the Court’s  
18 Final Approval Order, without a timely appeal having been filed; or, (iii) in the event that a timely  
19 appeal of the Court’s Final Approval Order has been filed, then the Settlement Agreement shall be  
20 final when the applicable appellate court has rendered a final decision or opinion affirming the  
21 Court’s Final Approval Order without material modification, and the applicable date for seeking  
22 further appellate review has passed, or the date that any such Appeal has been either dismissed or  
23 withdrawn by the appellant.

24      2.13    **Fee and Expense Award.** “Fee and Expense Award” means such award of attorneys’  
25 fees and costs/expenses as the Court may authorize to be paid to Plaintiff’s Counsel from the Gross  
26 Settlement Fund for their services to Plaintiffs in the Action.

1           **2.14 Final Approval Hearing.** “Final Approval Hearing” means the hearing at or after  
2 which the Court makes a decision on whether to grant final approval of the Settlement as fair,  
3 reasonable and adequate, implement the terms of the Agreement and enter Judgment.

4           **2.15 Final Approval Order or Judgment.** “Final Approval Order” or “Judgment” means  
5 the order and judgment finally approving the Settlement, as contemplated in Section 5.2 of this  
6 Agreement.

7           **2.16 Gross Settlement Fund.** “Gross Settlement Fund” means the aggregate sum of Two  
8 Million and Five Hundred Thousand Dollars and No Cents (\$2,500,000.00), which is the maximum  
9 total amount that Defendant shall be required to pay for all purposes under this Agreement in full and  
10 final settlement of the Action. The following shall be paid from the Gross Settlement Fund pursuant  
11 to the Plan of Allocation: (a) Settlement Awards to all Settlement Class Members, (b) Fee and  
12 Expense Award, (c) Service Awards; (d) payment to the California Labor & Workforce Development  
13 Agency (“LWDA”) related to Plaintiff’s PAGA Claim; and (e) Settlement Administration Costs.  
14 Under no circumstances shall Defendant pay any sum in excess of the Gross Settlement Fund.

15           **2.17 Judgment.** “Judgment” means the Judgment entered on the Final Approval Order in  
16 the Action.

17           **2.18 LWDA Payment.** “LWDA Payment” means the final amount approved as payment  
18 to the LWDA for resolution of the PAGA claims of Plaintiff and the Class Members.

19           **2.19 Named Plaintiff.** “Named Plaintiff” means plaintiff Davit Pitshikyan.

20           **2.20 Net Settlement Fund.** “Net Settlement Fund” means the Gross Settlement Fund less  
21 the Fee and Expense Award, the Service Awards, the LWDA Payment, and the Settlement  
22 Administration Costs.

23           **2.21 Objection Deadline.** “Objection Deadline” means the postmarked date 30 days from  
24 the initial mailing of the Class Notice, or such other date set by the Court in the Preliminary Approval  
25 Order, for a Class Member to object to the Settlement as provided in Section 4.4 of this Agreement.  
26 In the event the Settlement Administrator must re-mail a Class Notice, those Settlement Class  
27 Members shall have an additional fourteen (14) days to object to the Settlement; provided, however  
28

that all Objections must be postmarked by the date 60 days from the date of initial mailing of the Class Notice no matter when the re-mailing occurred.

**2.22 Parties.** “Parties” means Named Plaintiff and Defendant.

**2.23 Plaintiffs.** “Plaintiffs” means Named Plaintiff and Class Members.

**2.24 Plaintiff’s Counsel.** “Plaintiff’s Counsel” means Humphrey & Rist, LLP, and Tower Legal Group, PC.

**2.25 Plan of Allocation.** “Plan of Allocation” means the manner in which the Net Settlement Fund shall be allocated to Settlement Class Members, as specified in Section 4.5 of this Agreement.

**2.26 Preliminary Approval or Preliminary Approval Order.** “Preliminary Approval” or “Preliminary Approval Order” means the order preliminarily approving the Settlement, which shall, among other things, preliminarily approve the Settlement as fair, reasonable and adequate, approve the content and manner of distribution of Class Notice to Plaintiffs, approve the Settlement Administrator, and set the briefing schedule for Named Plaintiff’s motion for final approval of the Settlement.

**2.27 Preliminary Approval Date.** “Preliminary Approval Date” means the date upon which the Court enters the Preliminary Approval Order.

**2.28 Pro Rata Allocation.** “Pro Rata Allocation” means the amount of money to be paid to each Settlement Class Member from the Net Settlement Fund, based on the Plan of Allocation set forth in Section 4.5 of this Agreement.

**2.29 Released Claims.** “Released Claims” means all claims asserted in the Complaints, including but not limited to Defendant’s alleged failure to pay the California minimum wage for all hours worked; Defendant’s alleged failure to pay overtime; Defendant’s alleged failure to reimburse Settlement Class Members for business expenses in violation of Cal. Labor Code §2802; Defendant’s allegedly unlawful deductions from compensation in violation of Cal. Labor Code §§ 221, 223 and 400-410, and IWC Wage Order, number 9, § 8; Defendant’s alleged requirement to provide a cash bond in violation of § 406 or to purchase items from Defendant in violation of § 450; Defendant’s alleged failure to provide meal periods and/or rest periods; Defendant’s alleged failure to timely

furnish accurate wage statements; Defendant's alleged failure to pay all wages owed upon termination; Defendant's alleged unlawful, unfair, and deceptive business practices in violation of the Cal. Business & Professions Code §17200, et seq. ("Section 17200"), and any penalties, liquidated damages, interest, attorneys' fees, or litigation costs allegedly due and owing by virtue of any of the foregoing; as well as any and all wage and hour claims, whether known or unknown, at law or in equity, which Settlement Class Members may now have or may have as of the execution of this Agreement, under Section 17200, the California Labor Code, the wage orders of the California Industrial Welfare Commission, or other federal, state, or local law based upon the factual allegations in the Complaint including Plaintiff's allegation that DHE has misclassified Plaintiff and the Settlement Class Members as independent contractors. Released Claims also includes, but is not limited to, claims for failing to promptly pay all wages due and owing at the time of termination or discharge in violation of Cal. Labor Code §203; engaging in unlawful/unfair/fraudulent business practices in violation of Section 17200; failing to provide accurate itemized wage statements in violation of Cal. Labor Code § 226; and any and all penalties pursuant to PAGA, based upon the factual allegations in the Complaint including Plaintiff's allegation that DHE has misclassified Plaintiff and the Settlement Class Members as independent contractors.

**2.30 Released Parties.** "Released Parties" means Defendant, all of Defendant's past and present parent corporations, subsidiaries, divisions, affiliates, related companies, successors and assigns and each of their respective past, present and future officers, directors, employees, partners, shareholders, representatives, attorneys, and agents.

**2.31 Request for Exclusion.** "Request for Exclusion" means a written request by a Class Member to be excluded from the Settlement.

**2.32 Request for Exclusion Deadline.** "Request for Exclusion Deadline" means the postmarked date 30 days from the date of initial mailing of the Class Notice, or such other date set by the Court in the Preliminary Approval Order, for a Class Member to mail a Request for Exclusion to the Claims Administrator. In the event the Settlement Administrator must re-mail a Class Notice, then those Class Members shall have an additional fourteen (14) days from the date of re-mailing to request exclusion from the Settlement, provided, however, that all Requests for Exclusion must be



postmarked by the date 60 days from the date of initial mailing of the Class Notice no matter when the re-mailing occurred.

**2.33 Service Award.** “Service Award” means the payment, if any, authorized by the Court to be made to a Named Plaintiff in addition to any Pro Rata Allocation.

**2.34 Settlement.** “Settlement” means this Agreement and all actions taken pursuant to and in furtherance of this Agreement.

**2.35 Settlement Administration Costs.** “Settlement Administration Costs” means the amount approved by the Court to be paid out of the Gross Settlement Fund for the services of a Settlement Administrator to administer the Settlement, including but not limited to printing and mailing the Class Notice, locating Class Members, calculating Settlement Awards, issuing Settlement Award and other checks payable pursuant to this Agreement, and reporting all applicable payments made hereunder on Internal Revenue Service (IRS) Form 1099-MISC. It is estimated that the Settlement Administration Costs will total no more than \$15,000.00.

**2.36 Settlement Administrator.** “Settlement Administrator” means ILYM GROUP, INC., or such other administrator as may be approved by the Court, which shall be responsible for administering the Settlement pursuant to the terms of the Agreement, the Class Notice, the Preliminary Approval Order, and the Final Approval Order and Judgment. The Settlement Administrator shall agree to confidentiality terms as may be required by Defendant regarding Class Members’ personal identifying information provided to the Settlement Administrator by it, and the Settlement Administrator shall work with Plaintiff’s Counsel and Defendant’s Counsel to implement and administer appropriate fraud-prevention policies relating to the Settlement.

**2.37 Settlement Award.** “Settlement Award” means the Pro Rata Allocation to be paid from the Net Settlement Fund to a Settlement Class Member.

**2.38 Settlement Class Members.** “Settlement Class Members” means all Class Members who do not timely complete and mail a Request for Exclusion from the Settlement.

### **3. SETTLEMENT TERMS**

**3.1 Settlement Payment by Defendant.** In full and final settlement of this Action and the Released Claims, within thirty (30) days of the Effective Date, Defendant shall remit the Gross

1 Settlement Fund to the Settlement Administrator for the purpose of funding the Settlement. The  
2 Gross Settlement Fund shall be applied to the payment of all Settlement Awards, Plaintiff's Counsel's  
3 Fee and Expense Award, the LWDA Payment, Service Awards, and Settlement Administration Costs  
4 as awarded by the Court. Under no circumstances will Defendant be obligated to pay more than the  
5 Gross Settlement Fund to settle the Action and the Released Claims. This settlement is non-  
6 reversionary, meaning that Settlement Class Members will not have to make a claim in order to  
7 receive a distribution. Distributions, in the form of individual Settlement Awards, will be made  
8 directly to each participating Settlement Class Member.

9       **3.2 Attorneys' Fees and Costs.** Defendant will not oppose Named Plaintiff's motion for  
10 up to \$825,000 (less than one-third (1/3) of the Gross Settlement Fund) as an award of attorneys'  
11 fees, plus reasonable costs up to \$25,000 ("Fee and Expense Award"). Named Plaintiff agrees not to  
12 ask the Court for more than \$825,000.00 for attorneys' fees or more than \$25,000.00 for costs, and in  
13 no event shall Defendant be liable for any attorneys' fees or costs in excess of these amounts. The  
14 Fee and Expense Award shall be paid from the Gross Settlement Fund, and Defendant shall not  
15 otherwise be obligated to pay any portion of Plaintiff's attorneys' fees, costs or expenses. The  
16 specific amounts of the attorneys' fees and costs awarded shall be subject to final approval by the  
17 Court, and the award of any amounts less than requested by Named Plaintiff will not be grounds for  
18 terminating the Settlement, but may be subject to an appeal by Plaintiffs or Plaintiffs' Counsel. Any  
19 amount of attorneys' fees and costs requested by Named Plaintiff and ultimately not awarded by the  
20 Court shall be included in the Net Settlement Fund for distribution to the Settlement Class Members.

21       **3.3 LWDA Allocation and Payment.** Defendant will not oppose an allocation of \$20,000  
22 of the Gross Settlement Fund to the LWDA and Class Members pursuant to their claims for relief under  
23 PAGA. Subject to court approval, the Parties anticipate that \$15,000, or seventy-five percent (75%) of  
24 the allocation, would be paid to the LWDA and \$5,000, or twenty-five percent (25%) of the allocation,  
25 would be distributed to the Settlement Class Members as part of the Net Settlement Fund.

26       **3.4 Service Awards.** Defendant will not oppose Named Plaintiff's motion for Service  
27 Awards in an amount not to exceed \$15,000.00, subject to approval by the Court. This Service  
28 Award is payment for the Named Plaintiff's efforts and activities in furtherance of the Action and its

1 resolution, and in consideration of the Named Plaintiff's general release of claims set forth in Section  
2 5.4 below. Each Service Award paid under this Section shall be pre-tax and reported on IRS Form  
3 1099-MISC. Any amount not approved by the Court as a Service Award shall be included in the Net  
4 Settlement Fund for distribution to the Settlement Class Members.

5       **3.5 Settlement Administration Costs.** Defendant will not oppose the award of  
6 Settlement Administration Costs in an amount not to exceed \$15,000.00, to be paid from the Gross  
7 Settlement Fund and subject to approval by the Court. Any costs of administration of the Settlement  
8 not approved by the Court shall remain in the Net Settlement Fund for distribution to the Settlement  
9 Class Members. The parties have selected ILYM Group as the Settlement Administrator.

10       **3.6 Interim Stay of Proceedings.** The Parties agree to the entry of a formal stay of all  
11 proceedings in the Action, except such proceedings as may be necessary to implement and complete  
12 the Settlement, pending the Court's Final Approval Order and entry of Judgment.

#### 13 **4. CLASS SETTLEMENT PROCEDURES**

14       **4.1 Preliminary Approval.** As soon as practicable after execution of this Agreement,  
15 Named Plaintiff shall move for Preliminary Approval of the Settlement. Defendant will not oppose  
16 the motion, provided it is consistent with this Agreement. Plaintiff's motion shall request that the  
17 Court:

18               a. Preliminarily approve this Agreement as being fair, reasonable and adequate;

19               b. Preliminarily approve that Plaintiffs' law firms be appointed as Plaintiffs'  
20 Counsel to carry out the duties described in this Agreement and preliminarily approve Plaintiff as  
21 Class Representative;

22               c. Preliminarily certify the Class, for settlement purposes only, as an opt-out class  
23 under California Code of Civil Procedure §382. More specifically, the Parties agree as part of the  
24 Agreement that, for settlement purposes, the requirements of California Code of Civil Procedure §382  
25 are satisfied. This Agreement is made solely for purposes of the Settlement. The Agreement is in no  
26 way an admission that class certification is proper, and this Agreement will not be admissible in this  
27 or any other action or proceeding as evidence that (i) the claims advanced in the Action should be  
28

certified, or (ii) Defendant or any of the Released Parties are liable to Plaintiff, the Class Members, or any other putative class.

d. Preliminarily approve the form, content and manner of distribution of the Class Notice (**Exhibit 2**) and Class Member Information Sheet (**Exhibit 3**).

e. Set deadlines for the Settlement Administrator to distribute the Class Notice and for Class Members to return their Requests for Exclusion or objections to the Settlement;

f. Set a deadline for Named Plaintiff to file his motion for final approval of the Settlement;

g. Approve ILYM Group, Inc. as the Settlement Administrator; and

h. Stay all proceedings in the Action pending Final Approval.

**4.2 Class Notice.** Subject to Court approval, the Parties agree that as soon as practicable after entry of the Preliminary Approval Order, the Settlement Administrator shall provide notice of the Settlement to the Class Members pursuant to the following procedures:

**4.2.1** Within 10 days of the entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator the following information with respect to each Class Member, based on Defendant's records: (i) name, (ii) last known residence address, (iii) last known telephone number, (iv) social security number; and (v) the number of workweeks the Class Member contracted with Defendant during the Class Period. The information so provided shall be designated as Confidential under an Amended Protective Order entered into between the parties (the "Protective Order"), and the Settlement Administrator shall give Defendant its signed acknowledgment in the form of Exhibit A to the Protective Order that it is bound thereby before Defendant provides the information. The information Defendant provides to the Settlement Administrator, along with any updated contact information identified by the Settlement Administrator as set forth in Section 4.2.3, below, shall be used solely to administer the Settlement, shall remain confidential, and shall not be disclosed to anyone, except pursuant to the express written authorization of Defendant or the individual in question, by order of the Court, or to the extent necessary to fulfill the Settlement Administrator's reporting obligations hereunder. Nothing herein shall limit use of the information by

1 the Settlement Administrator for purposes of administering the Settlement; provided, however, that  
2 the Settlement Administrator shall not disclose any of the information to Plaintiffs or Plaintiff's  
3 Counsel, anything in the Protective Order to the contrary notwithstanding. Plaintiff's Counsel shall  
4 be provided the current name and contact information of any Settlement Class Member who files an  
5 objection or who contests the information in his or her Class Notice.

6 4.2.2 The Settlement Administrator's duties shall include, without limitation:

7 (i) printing and mailing to the Class Members the Class Notice as directed by the Court; (ii) taking all  
8 steps reasonably necessary to ensure Class Members timely receive the Class Notice; (iii) consulting  
9 as necessary with Plaintiff's Counsel and Defendant's Counsel concerning the workweeks Class  
10 Members contracted with Defendant and the amount of any Settlement Awards to be paid to  
11 Settlement Class Members; (iv) taking receipt of and safeguarding the Gross Settlement Fund;  
12 (v) calculating and disbursing the Settlement Awards, the Service Awards, and the Fee and Expense  
13 Award, provided such amounts are approved by the Court; (vi) issuing IRS Forms 1099-MISC with  
14 respect to the Settlement Awards, Service Awards, and Fee and Expense Award, together with such  
15 other tasks as the Parties may mutually agree or the Court may order the Settlement Administrator to  
16 perform. The Settlement Administrator shall take all reasonable steps to ensure that (a) the highest  
17 percentage of Class Members receive a Class Notice; (b) Class Members who wish to participate in  
18 the Settlement are permitted to do so consistent with this Agreement; and (c) it has the most current  
19 and accurate addresses for Class Members, including, but not limited to performing an initial  
20 National Change of Address database search on Class Members for whom Defendant does not have a  
21 current address. In addition, the Settlement Administrator shall perform a standard search, also  
22 known as "batch," "skip trace," or "credit header" searches on all addresses returned as undeliverable.  
23 The Settlement Administrator shall immediately re-mail a Class Notice to all updated addresses  
24 obtained through its efforts to locate the most current and accurate addresses for Class Members. The  
25 Settlement Administrator shall also provide toll-free telephone support to Class Members for any  
26 questions they may have; set up a website for Class Members to be directed to, with Settlement-  
27 related documents posted thereto; maintain appropriate databases to fulfill its duties; receive, control  
28 and account for all returned Class Notices, Requests for Exclusion, objections and disputes; calculate

1 the Settlement Awards; and prepare and deliver reports to Plaintiff's Counsel and Defendant's  
2 Counsel on a weekly basis that communicate the status of the administration of the notice process,  
3 including the number of Class Notices mailed, returned, searched and re-mailed, as well as the  
4 number of Requests for Exclusion, objections and any disputes received by it. In addition to the  
5 duties identified above, the Settlement Administrator shall prepare final declarations, reports and  
6 invoices that accurately describe the Settlement process, the level of participation, and actions taken  
7 to ensure the best possible notice of the Settlement was provided to Class Members.

8           4.2.3 Within 21 days following receipt of the information to be provided under  
9 Section 4.2.1, above, or by December 15, 2016, whichever is later, the Settlement Administrator shall  
10 mail the Class Notice to all Class Members. The Settlement Administrator shall send the Class  
11 Notice in the form approved in the Preliminary Approval Order to Class Members, via first class  
12 United States mail, using the most current mailing address. Any Class Notices returned to the  
13 Settlement Administrator with a forwarding address shall be immediately re-mailed by the Settlement  
14 Administrator. The Settlement Administrator shall conduct one or more address searches for any  
15 Class Member's Class Notice that is returned without a forwarding address and shall, upon obtaining  
16 a new or different address, immediately re-mail the Class Member's Class Notice. It shall be  
17 presumed that each and every Class Member whose Class Notice is not returned to the Claims  
18 Administrator as undeliverable within thirty (30) days after mailing has actually received the Class  
19 Notice.

20           4.2.4 Without prejudice to any other remedies, the Settlement Administrator shall  
21 agree to be responsible for any breach of its obligations (whether committed by the Settlement  
22 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from  
23 and against all liabilities, claims, causes of action, costs and expenses (including legal fees and  
24 expenses) arising out of any breach committed by the Settlement Administrator or its agents.

25           4.2.5 If a Class Member disputes the total work weeks shown on his or her Class Member  
26 Information Sheet, he or she may produce information to the Settlement Administrator showing such  
27 other number of work weeks he or she contends should be used. The Settlement Administrator shall  
28

1 review the information provided and make a final determination as to the work week figure to be  
2 used.

3       **4.3 Requests for Exclusion/Opt Outs.** Class Members who wish to be excluded from or  
4 opt out of the Settlement must submit a written, signed Request for Exclusion to the Settlement  
5 Administrator, within the deadlines set by the Court. Any Class Members who validly and timely opt  
6 out of the Class will not be entitled to any recovery under the Settlement, will not be bound by the  
7 Settlement, and will not have any right to object, appeal or comment thereon. Class Members who do  
8 not submit a valid and timely request for exclusion shall be bound by all the terms of the Agreement  
9 and any Final Approval Order or Judgment in this Action, and shall be deemed to have waived all  
10 unstated objections and opposition to the fairness, reasonableness, and adequacy of this Agreement.

11               4.3.1 The Request for Exclusion must contain the (i) the name of this Action; (ii) the  
12 full name, address, telephone number and last four digits of the Social Security Number of the person  
13 requesting to be excluded; (iii) the words “Request for Exclusion” at the top of the document; and  
14 (iv) the following statement:

15               “I wish to be excluded from the Settlement of this case, *Davit Pitshikyan*  
16 *v. Dependable Highway Express, Inc., et. al.*, Case No. 34-2015-  
17 00182832. I understand that by requesting to be excluded from the  
18 Settlement, I will receive no money from the Settlement and I may bring  
19 a separate action. I understand that in any separate action, I may receive  
20 nothing or I may receive less than I would have received if I had not  
21 asked to be excluded from the Settlement. I understand that I should  
22 consult with an attorney, at my own expense, regarding the applicable  
23 statute of limitations.”

24               4.3.2 The Request for Exclusion must be personally signed by the Class Member  
25 who seeks to be excluded. No Class Member may opt out by having a Request for Exclusion  
26 submitted by an actual or purported agent or attorney acting on behalf of the Class Member. No  
27 Request for Exclusion may be made on behalf of a group of Class Members.

28               4.3.3 For purposes of determining timeliness, Requests for Exclusion shall be  
deemed to have been submitted on the date postmarked by the U.S. Postal Service or other delivery  
service. The Settlement Administrator shall stamp the date received on the original of any Request  
for Exclusion it receives. Not later than ten (10) days after the Request for Exclusion Deadline set by

1 the Court, the Settlement Administrator will inform Plaintiff's Counsel and Defendant's Counsel of  
2 the total number of Class Members who timely submitted valid Requests for Exclusion. Not later  
3 than ten (10) days before the Final Approval Hearing, the Settlement Administrator shall serve copies  
4 of all date-stamped Requests for Exclusion on Plaintiff's Counsel and Defendant's Counsel as well as  
5 a declaration describing the notice process. The Settlement Administrator shall retain the originals of  
6 all Requests for Exclusion in its files. Counsel for the Parties shall not use or disclose the information  
7 thus received for any purpose other than the effectuation of the Settlement.

8 4.3.4 Each Class Member who does not submit a Request for Exclusion substantially  
9 in compliance with Sections 4.3.1 and 4.3.2 by the Request for Exclusion Deadline shall be bound by  
10 the terms of this Agreement and any Court order approving the terms of the Settlement.

11 4.3.5 In the event of any issue over the completeness, timeliness or validity of any  
12 Request for Exclusion, the Parties shall meet and confer in good faith for the purpose of resolving the  
13 issue and, if the issue cannot be resolved, shall submit the dispute to the Settlement Administrator for  
14 a final and binding resolution which shall not be appealable.

15 4.3.6 If more than five percent of Class Members opt out, Defendant shall have the  
16 unilateral right to rescind this Agreement, in which case all of Defendant's obligations under this  
17 Agreement shall cease to be of any force or effect, and this Agreement shall be null and void. If  
18 Defendant exercises this option, it shall provide Named Plaintiff with written notice of its election  
19 within 21 days of the Request for Exclusion Deadline set by the Court, with a copy to the Settlement  
20 Administrator, at which point the Parties shall return to their respective positions that existed before  
21 the execution of this Agreement. If rescinded, no term of this Agreement or any draft thereof, or the  
22 negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall have  
23 any effect or be admissible as evidence for any purpose in the Action, or in any other proceeding.  
24 Notwithstanding the foregoing, the Parties agree that in the event this Agreement is rescinded by  
25 Defendant pursuant to this Section, Defendant shall pay the expenses incurred by the Settlement  
26 Administrator through the date of Defendant's election to rescind, not to exceed seventy-five percent  
27 (75%) of the amount approved by the Court in the Preliminary Approval Order.



1           4.4     **Objections to Settlement.** Class Members who do not exclude themselves from the  
2 Settlement may object to the Settlement, in accordance with the procedure set forth below.

3                 4.4.1 Class Members who wish to object to the Settlement must file with the Court  
4 and serve on counsel for the Parties and the Settlement Administrator a written statement objecting to  
5 the Settlement signed by the Class Member by the Objection Deadline. No Class Member may object  
6 on behalf of any other Class Member or group of Class Members. The Class Member's written  
7 statement and all supporting briefs or other materials must be filed with the Court and served on  
8 counsel for the Parties no later than the Request for Exclusion Deadline.

9                 4.4.2 At the same time Named Plaintiff moves for Final Approval pursuant to  
10 Section 4.7 of this Agreement, Named Plaintiff shall also file a response to any objections filed by  
11 Class Members. Named Plaintiff's Counsel shall give Defendant's Counsel a draft of the response to  
12 review at least three (3) days before the filing deadline. Defendant shall be permitted, but not  
13 required, to file its own response to any objections.

14                4.4.3 No Class Member shall be entitled to be heard at the Fairness Hearing, whether  
15 individually or through separate counsel, unless the written statement of objections and supporting  
16 materials are timely filed and served as set forth in this Section. Class Members who fail to file and  
17 serve timely written objections in the manner specified above shall be deemed to have waived any  
18 objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the  
19 Settlement.

20           4.5     **Plan of Allocation: Calculation of Settlement Awards.** The Settlement  
21 Administrator shall be responsible for the Allocations of the Net Settlement Fund to Settlement Class  
22 Members. The Settlement Awards to Settlement Class Members will be paid on a pro rata basis as  
23 follows:

24                4.5.1 Before computing the amounts of any Settlement Awards to be paid to  
25 Settlement Class Members, the Claims Administrator shall determine the amount of the Net  
26 Settlement Fund by deducting from the Gross Settlement Fund the following: (a) the Fee and Expense  
27 Award; (b) the Service Award; (c) the LWDA payment for resolution of Plaintiffs' PAGA claim; and  
28 (d) the estimated amount of the Settlement Administration Costs.

1                   4.5.2 The Settlement Award for each Settlement Class Member shall be the  
2 Settlement Class Member's pro-rata share of the Net Settlement Fund, calculated as follows: The  
3 Settlement Administrator shall calculate the total number of workweeks worked by all Settlement  
4 Class Members. The Settlement Administrator will then divide the Net Settlement Fund by the total  
5 number of Settlement Class Member Workweeks, resulting in a per workweek value. The Settlement  
6 Administrator will then take the Per Workweek Value and multiply it by the number of Workweeks  
7 worked by each Settlement Class Member.

8                   4.5.3 The Settlement Administrator shall pay Settlement Awards from the Net  
9 Settlement Fund and shall pay only those Settlement Awards payable to Settlement Class Members.  
10 It is anticipated that the Settlement Class Members will be a subset of the Class Members because  
11 some number of Class Members may opt out of the Settlement.

12                   4.5.4 The Settlement Administrator shall determine the Settlement Award that each  
13 Settlement Class Member is entitled to receive, pursuant to the formula set forth in Section 4.5.2,  
14 above. In order to determine the amount of the Settlement Award to which any Settlement Class  
15 Member is entitled, the Settlement Administrator shall use the information provided by Defendant  
16 pursuant to Section 4.2.1, above. In the event that any dispute arises with respect to the total work  
17 weeks for a Class Member or a Settlement Award amount, the Settlement Administrator may review  
18 additional information provided by the Class Member but shall make the final determination after  
19 consultation with Plaintiff's Counsel and Defendant's Counsel.

20                   4.6     **Taxes.**

21                   4.6.1 Each Settlement Class Member, Named Plaintiff and Plaintiff's Counsel shall  
22 be solely responsible for the payment of all federal, state and local income taxes due on all amounts  
23 the Settlement Class Member, Named Plaintiff or Plaintiff's Counsel receives pursuant to this  
24 Agreement, and Defendant shall have no responsibility for any such taxes whatsoever.

25                   4.6.2 It shall be the responsibility of the Settlement Administrator to report payments  
26 made to Settlement Class Members, Named Plaintiff and Plaintiff's Counsel on IRS Form 1099-  
27 MISC, as applicable, and to provide copies thereof to the individuals named thereon, respectively,  
28 and to all applicable governmental entities, as required by law.

1           4.6.3 All reasonable and direct expenses and costs incurred by or at the direction of  
2 the Settlement Administrator in connection with the administration of the Settlement (including,  
3 without limitation, expenses of tax attorneys and/or accountants incurred in providing advice to the  
4 Settlement Administrator, and mailing and distribution costs and expenses relating to the filing (or  
5 failure to file) any necessary tax reports shall be considered a cost of administration of the Settlement  
6 and shall be part of the Settlement Administration Costs, to be paid out of the Gross Settlement Fund.

7           4.6.4 No person shall have any claim against Defendant (or its designee),  
8 Defendant's Counsel, Plaintiffs, Plaintiff's Counsel, or the Settlement Administrator based on  
9 mailings, distributions, payments or reports made in accordance with or pursuant to this Agreement.  
10 This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

11           4.7 **Final Approval and Entry of Judgment.** No later than thirty-five days after the  
12 Objection Deadline or the Request for Exclusion Deadline, or on or before such other date set by the  
13 Court, Named Plaintiff shall file his motion for final approval of the Settlement. Plaintiff's Counsel  
14 shall draft the final approval papers and give Defendant's Counsel a draft of the papers to review at  
15 least five (5) days before the motion is filed. In the motion, Named Plaintiff shall request that the  
16 Court finally approve the Settlement as fair, reasonable and adequate and enter Judgment on the  
17 Court's Final Approval Order, dismissing the Settlement Class Members' claims with prejudice and  
18 the claims of all other Class Members without prejudice. Defendant will not oppose the motion,  
19 provided it is consistent with this Agreement.

20           4.8 **Calculation of Gross and Net Settlement Funds.** Within 21 days from the date of  
21 Final Approval of the Settlement, the Settlement Administrator shall calculate and advise Counsel for  
22 the Parties of the amount of the Net Settlement Fund and the calculation thereof.

23           4.9 **Distribution of Settlement Awards.** After the Effective Date, the Settlement Awards  
24 shall be distributed to Settlement Class Members in accordance with the procedures set forth below:

25           4.9.1 Within 15 days from Defendant's remittance to the Settlement Administrator  
26 of the Gross Settlement Fund, the Settlement Administrator shall disburse (a) the Fee and Expense  
27 Award to Plaintiff's Counsel, (b) the Settlement Award checks to each Settlement Class Member, and  
28 (c) the Settlement Award checks and Service Awards to the Named Plaintiff. Also within 15 days

1 from Defendant's remittance of the Gross Settlement Fund, the Settlement Administrator shall  
2 provide Plaintiff's Counsel and Defendant's Counsel a written report listing each Settlement Class  
3 Member and the amount of the Settlement Award to be paid to each of them. Plaintiff's Counsel  
4 shall hold the information contained in this report in strictest confidence and not use or disclose it for  
5 any purpose, except on the written authorization of counsel for Defendant or by order of the Court.

6 4.9.2 All checks tendered to Settlement Class Members shall remain valid and  
7 negotiable for one hundred and eighty (180) days from the date of their issuance. In the event that  
8 any checks mailed to Settlement Class Members remain uncashed after the expiration of 180 days, or  
9 an envelope mailed to a Settlement Class Member is returned and no forwarding address can be  
10 located for the Settlement Class Member after reasonable efforts have been made, then any such  
11 funds shall be transmitted by the Settlement Administrator pursuant to governing California law to  
12 the California Department of Industrial Relations, to be held there in the name of and for the benefit  
13 of such class members.

14 4.9.3 Defendant shall fully discharge its obligations to Plaintiffs through the  
15 remittance of the Gross Settlement Fund to the Settlement Administrator as set forth in Section 3.1,  
16 above, regardless of whether individual Settlement Awards are actually received or negotiated by  
17 Settlement Class Members. Once Defendant has complied with its obligation set forth in Section 3.1,  
18 above, it shall be deemed to have satisfied all of the terms and conditions of this Agreement, shall be  
19 entitled to all the protections afforded it under the Agreement, and shall have no further obligations  
20 under the Agreement, regardless of what occurs with respect to the further administration of the  
21 Settlement. Without prejudice to any other remedies, both the Settlement Administrator and  
22 Plaintiff's Counsel shall hold Defendant harmless from and against all liabilities, claims, causes of  
23 action, costs and expenses (including legal fees and expenses) arising out of any failure to timely or  
24 properly compensate Settlement Class Members as provided in this Agreement.

25 **4.10 Questions and Disputes.**

26 4.10.1 In the event that questions or disputes arise regarding the entitlement of any  
27 Class Member under this Agreement, counsel for each Party shall cooperate to provide to counsel for  
28 the other Party and the Settlement Administrator all available information reasonably necessary to

1 resolve them. Such information shall be provided in either electronic form or hard copy, as the  
2 Settlement Administrator may reasonably request.

3 4.10.2 If the Parties cannot resolve any dispute concerning the entitlement of any  
4 Class Member under this Agreement, the dispute(s) shall be submitted to the Settlement  
5 Administrator, who shall resolve the dispute(s) and whose decision shall be final and binding. In  
6 such a dispute, the information provided by Defendant will be presumed accurate. If a Class Member  
7 disputes the number of workweeks listed on the Notice, the Class Member may produce evidence to  
8 the Settlement Administrator indicating the number of workweeks contended to have been received.  
9 Defendant's records will be presumed determinative, absent evidence to rebut Defendant's records. In  
10 the event the Class Member submits evidence, the Settlement Administrator will evaluate the  
11 evidence submitted and provide the evidence submitted to the Parties who agree to meet and confer  
12 about the evidence to determine the actual number of workweeks and estimated Settlement Award. If  
13 the Parties are unable to agree, the Parties agree to submit the dispute to the Settlement Administrator  
14 to render a final decision.

15 4.11 **Notification and Certification by Settlement Administrator.** The Settlement  
16 Administrator shall keep Defendant's Counsel and Plaintiff's Counsel apprised of the status of the  
17 settlement administration process and its distribution of Settlement Awards. Upon completion of  
18 administration of the Settlement, the Settlement Administrator shall provide a detailed, written  
19 certification of such completion to counsel for the Parties.

20 4.12 **Nullification of Agreement if Settlement Not Approved.** In the event (a) the Court  
21 does not preliminarily approve the Settlement as provided herein, (b) the Court does not finally  
22 approve the Settlement as provided herein, (c) the Court does not enter the Judgment as provided  
23 herein, or (d) the Settlement does not become final for any other reason, including the exercise of  
24 Defendant's right to rescind the Settlement under Section 4.3.6 above, this Agreement shall be null  
25 and void *ab initio* (with the exception of this Section) and any order or Judgment entered by the Court  
26 in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties.  
27 In such case, Defendant shall have no obligation to make any payments to the Settlement Class  
28

Members, Named Plaintiff or Plaintiff's Counsel, and the Parties shall be returned to their respective statuses as of June 26, 2016.

4.13 **Number of Class Members.** At the time the Parties signed the Memorandum of Understanding on June 27, 2016, Defendant represented there were 379 Class Members. As of the time of execution of this Agreement, Defendant believes that there are 391 Class Members but agrees that no more than 405 Class Members will be included in the settlement.

## **5. ENTRY OF JUDGMENT AND RELEASES**

5.1 **Obtaining Approval.** As soon as practicable after execution of this Agreement, Plaintiff's Counsel shall, with the cooperation of Defendant's Counsel as reasonably requested by Plaintiff's Counsel, take all necessary steps to secure Preliminary Approval and Final Approval of the Settlement by the Court, including responding to any objectors, intervenors, or other persons or entities seeking to preclude approval of this Agreement.

5.2 **Entry of Judgment.** The Final Approval Order and Judgment shall include a provision for entry of judgment in accordance with this Agreement, with each Party to bear all of its own costs and attorneys' fees, except as expressly set forth herein.

5.3 **Releases by Settlement Class Members.** Effective upon the Effective Date and for good and valuable consideration set forth herein, all Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly released, waived and relinquished the Released Claims. The Settlement Class Members agree not to sue any of the Released Parties with respect to any of the Released Claims and refrain from filing any actions, claims, complaints or proceedings regarding the Released Claims with any agency having jurisdiction over the wage and hour laws of the state of California, or from initiating any other proceedings against the Released Parties arising out of or relating to the Released Claims.

### **5.4 General Release by Named Plaintiff.**

5.4.1 Effective upon the Effective Date and for good and valuable consideration set forth herein, Named Plaintiff Davit Pitshikyan hereby forever generally and completely releases and discharges the Released Parties, of and from any and all claims and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and

undisclosed, and in particular of and from all claims and demands of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual, consequential and exemplary, past, present and future, arising out of or in any way related to agreements, transactions, events, acts or conduct at any time prior to and including the Effective Date, including but not limited to the Released Claims. The Named Plaintiff agrees not to sue or otherwise make a claim against any of the Released Parties with respect to any claim released herein by him and is hereby enjoined from filing any actions, claims, complaints or proceedings with the United States Department of Labor Wage and Hour Division or any agency having jurisdiction over the wage and hour laws of the states of California, or from initiating any other proceedings against any of the Released Parties regarding any of the claims released herein.

5.4.2 Named Plaintiff Davit Pitshikyan has been fully advised by Plaintiff's Counsel of the contents of section 1542 of the Civil Code of the State of California, and hereby expressly waives that section and the benefits thereof and the benefits of any similar law of any state or territory of the United States. Section 1542 states as follows:

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

5.4.3 This provision explicitly excludes any claim arising from workers compensation.

5.4.4 Named Plaintiff also acknowledges that he is entitled to and has been given twenty-one (21) days to consider whether to accept the terms of the general release agreed to in this Agreement. If Named Plaintiff executes this Agreement before the expiration of the 21-day period, he does so voluntarily, upon the advice and with the approval of Plaintiff's Counsel, and he expressly and voluntarily waives his right to consider the release for any remaining portion of that 21-day period. Named Plaintiff understands that, after executing this Agreement, he has the right to revoke it within seven (7) days after execution. Named Plaintiff understands that this Agreement will not become effective and enforceable unless and until the seven-day revocation period has passed.

1 **6. ADDITIONAL PROVISIONS**

2       **6.1 No Admission of Liability.** Defendant contends that at all relevant times it has  
3 complied with all applicable laws in all respects, that Class Members were not employees entitled to  
4 compensation for time spent contracted with Defendant, and that its conduct was not willful or  
5 otherwise unlawful with respect to any of the Claims. Defendant has denied and continues to deny  
6 each of the claims alleged in the Action and the contentions made by Named Plaintiff therein.  
7 Defendant denies any wrongdoing or legal liability arising out of any of the facts or conduct alleged  
8 in the Action and believes it has valid defenses to all of the claims alleged therein. This Agreement  
9 reflects the compromise and settlement of disputed claims between the Parties, and its provisions and  
10 any and all drafts, communications or discussions relating thereto do not constitute, are not intended  
11 to constitute, and will not under any circumstances be deemed to constitute an admission by  
12 Defendant as to the merits, validity or accuracy of any of the allegations or claims in the Action, or a  
13 waiver of any defense.

14       **6.2 Parties Represented by Counsel.** The Parties hereby acknowledge that they have  
15 been represented in negotiations for and in the preparation of this Agreement by independent counsel  
16 of their own choosing, they have read this Agreement and have had it fully explained to them by such  
17 counsel, and they are fully aware of the contents of this Agreement and of its legal effect.

18       **6.3 Voluntary Agreement.** This Agreement is executed voluntarily and without duress or  
19 undue influence on the part of any Party, or of any other person, firm or entity. Each Party has made  
20 such investigation of the facts pertaining to this Agreement and of all other matters pertaining hereto  
21 as he or it deems necessary.

22       **6.4 Notices.** All notices, requests, demands and other communications required to be  
23 given under this Agreement shall be in writing and shall be delivered personally, faxed, emailed or  
24 mailed, postage prepaid, by first class United States mail, addressed as follows:  
25  
26  
27  
28



To Plaintiffs:

**HUMPHREY & RIST LLP**

Christina A. Humphrey, Esq. (SBN 226326)  
351 Paseo Nuevo, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Telephone: (805) 618-2924  
Facsimile: (805) 618-2939  
christina@humphreyrist.com

**TOWER LEGAL GROUP, PC**

James A. Clark, Esq. (SBN 278372)  
1510 J Street, Suite 125  
Sacramento, California 95814  
Telephone: (916) 361-6009  
Facsimile: (916) 361-6019  
james.clark@towerlegalgroup.com

To Defendant:

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

Angela S. Cash (admitted pro hac vice)  
Paul D. Root (admitted pro hac vice)  
10 W. Market St. Suite 1500  
Indianapolis, IN 46204  
Tel: (317) 637-1777  
Fax: (317) 687-2414  
acash@scopelitis.com  
proot@scopelitis.com

6.5 **Authorization.** The Parties hereto represent and warrant that each signatory hereto has the full right and authority to enter into this Agreement and bind the Party on whose behalf he, she or it has executed this Agreement.

6.6 **Agreement Binding on Successors in Interest.** This Agreement shall be binding on and inure to the benefit of the respective parent corporations, subsidiaries, affiliates, officers, directors, employees, partners, shareholders, agents, successors, assigns, heirs and personal representatives of the Parties.

6.7 **Time Periods.** The time periods and dates set forth in this Agreement with respect to the giving of notices and hearings are subject to approval and modification by the Court or the written stipulation of counsel for the Parties.

6.8 **Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to execution and delivery of any and all additional papers, documents and other things and taking such other action that may be reasonably necessary to implement the terms of this Agreement. The Parties and their counsel shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that

1 may become necessary by order of the Court, to effectuate this Agreement and the terms set forth  
2 herein.

3       **6.9     Entire Agreement.** The Exhibits to this Agreement are an integral part of this  
4 Agreement and are hereby incorporated and made a part of the Agreement. This Agreement contains  
5 the entire agreement between the Parties and constitutes the complete, final and exclusive  
6 embodiment of their agreement with respect to the subject matter hereof. This Agreement is executed  
7 without reliance upon any promise, representation or warranty by any Party or any representative of a  
8 Party, other than those expressly set forth herein. Any inconsistency between this Agreement and the  
9 attached Exhibits will be resolved in favor of this Agreement.

10       **6.10    Headings.** The various headings used in this Agreement are solely for the  
11 convenience of the Parties and shall not be used to interpret this Agreement.

12       **6.11    No Construction Against Drafter.** This Agreement shall be deemed to have been  
13 drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter  
14 shall not apply to this Agreement.

15       **6.12    Amendment and Modification.** Except as expressly provided in Section 6.7, above,  
16 with respect to time periods and dates set forth herein, this Agreement may not be amended, altered  
17 or modified except in a writing signed by the Parties hereto, their successors in interest or their duly  
18 authorized representatives, and approved by the Court.

19       **6.13    Public Comments Regarding the Action or the Settlement.** Named Plaintiff and  
20 Defendant, and their respective counsel, recognize, and accept that the Parties to this Agreement  
21 desire that the terms of the Agreement, the fact of the Settlement embodied in this Agreement, the  
22 disposition of the Action, the Action, and all matters relating to the litigation of the Action, including  
23 discovery proceedings therein, and evidence obtained during the course of the Action, shall not be  
24 discussed with or presented to the media or press or advertised in any fashion other than as indicated  
25 in this Agreement.

26       **6.14    Governing Law.** This Agreement is entered into in accordance with the laws of the  
27 State of California and shall be governed by and interpreted in accordance with those laws.

1           **6.15 Jurisdiction of the Court.** Except as provided in Section 4.3.5, above, any dispute  
2 regarding the interpretation or validity of or otherwise arising out of this Agreement, or relating to the  
3 Action or the Released Claims, shall be subject to the exclusive jurisdiction of the Court, and Named  
4 Plaintiff and Defendant agree to submit to the personal and exclusive jurisdiction of the Court for the  
5 purpose of resolving any such dispute. Following the Effective Date, the Court shall retain  
6 jurisdiction solely with respect to the interpretation, implementation and enforcement of the terms of  
7 this Agreement and all orders and judgments entered in connection therewith, and the Parties shall  
8 submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the  
9 Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

10           **6.16 Named Plaintiff's Waiver of Right to Opt Out and Object.** By signing this  
11 Agreement, Named Plaintiff agrees to be bound by the terms herein and not to request exclusion from  
12 or to object to any of the terms of this Agreement. Any such request for exclusion or objection shall  
13 therefore be void and of no force or effect.

14           **6.17 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this  
15 Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that  
16 may be instituted, prosecuted or attempted in breach of or contrary to this Agreement.

17           **6.18 Injunction.** The Parties agree that the Court, in its discretion, may issue an injunction  
18 in the Preliminary Approval Order prohibiting all Class Members who do not submit timely Requests  
19 for Exclusion from instituting, causing to be instituted or continuing to prosecute any action or  
20 proceeding against Defendant, whether in court or before an administrative agency or other tribunal,  
21 whether in an individual or representative capacity, on any Released Claims. Such injunction shall be  
22 made permanent as to Settlement Class Members upon entry of the Judgment. The issuance of the  
23 subject injunction, being in the discretion of the Court, is not a condition to the conclusion of the  
24 Settlement on the other terms set forth herein.

25           **6.19 Signatures.** Signature by facsimile or in Portable Document Format (PDF) shall have  
26 the same force and effect as original signatures.

27           **6.20 Execution Date and Execution in Counterparts.** This Agreement shall be deemed  
28 executed upon the last date of signature of all of the undersigned. The Parties may execute this

1 Agreement in counterparts, each of which shall constitute an original, but all of which together shall  
2 constitute one and the same instrument having the same force and effect as if all Parties had signed  
3 the same instrument.

4 **IN WITNESS THEREOF**, the Parties hereto have so agreed.

5 DATED: November \_\_, 2016

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

Davit Pitshikyan  
Plaintiff

8 DATED: November \_\_, 2016

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

Dependable Highway Express, Inc.  
Defendant

13 DATED: November 7, 2016

HUMPHREY & RIST, LLP

15 By: Christina A. Humphrey

Christina Humphrey  
Attorney for Plaintiff  
Davit Pitshikyan

17 DATED: November \_\_, 2016

TOWER LEGAL, PC

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

James A. Clark,  
Attorney for Plaintiff  
Davit Pitshikyan

23 DATED: November \_\_, 2016

SCOPELITIS GARVIN LIGHT HANSON &  
FEARY, PC

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

Angela S. Cash  
Attorney for Defendant  
Dependable Highway Express, Inc.

1 Agreement in counterparts, each of which shall constitute an original, but all of which together shall  
2 constitute one and the same instrument having the same force and effect as if all Parties had signed  
3 the same instrument.

4 IN WITNESS THEREOF, the Parties hereto have so agreed.

5 DATED: November 5, 2016

6  
7 By:   
8 Davit Pitshikyan  
9 Plaintiff

10 DATED: November \_\_, 2016

11 By:   
12 Dependable Highway Express, Inc.  
13 Defendant

14 DATED: November \_\_, 2016

15 HUMPHREY & RIST, LLP  
16 By:   
17 Christina Humphrey  
18 Attorney for Plaintiff  
19 Davit Pitshikyan

20 DATED: November \_\_, 2016

21 TOWER LEGAL, PC  
22 By:   
23 James A. Clark,  
24 Attorney for Plaintiff  
25 Davit Pitshikyan

26 DATED: November \_\_, 2016

27 SCOPELITIS GARVIN LIGHT HANSON &  
28 FEARY, PC  
By:   
Angela S. Cash  
Attorney for Defendant  
Dependable Highway Express, Inc.

4811-1720-6331, v. 1

1 Agreement in counterparts, each of which shall constitute an original, but all of which together shall  
2 constitute one and the same instrument having the same force and effect as if all Parties had signed  
3 the same instrument.

4 **IN WITNESS THEREOF**, the Parties hereto have so agreed.

5 DATED: November \_\_, 2016

7 By:

Davit Pitshikyan  
Plaintiff

8 DATED: November \_\_, 2016

10 By:

Dependable Highway Express, Inc.  
Defendant

12 DATED: November \_\_, 2016

HUMPHREY & RIST, LLP


14 By:

Christina Humphrey  
Attorney for Plaintiff  
Davit Pitshikyan

16 DATED: November 9, 2016

TOWER LEGAL, PC

18 By:

  
James A. Clark,  
Attorney for Plaintiff  
Davit Pitshikyan

20 DATED: November \_\_, 2016

SCOPELITIS GARVIN LIGHT HANSON &  
FEARY, PC

22 By:

Angela S. Cash  
Attorney for Defendant  
Dependable Highway Express, Inc.

24 4811-1720-6331, v. 1

1 Agreement in counterparts, each of which shall constitute an original, but all of which together shall  
2 constitute one and the same instrument having the same force and effect as if all Parties had signed  
3 the same instrument.

4 **IN WITNESS THEREOF**, the Parties hereto have so agreed.

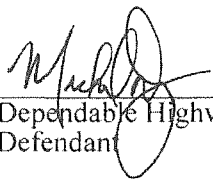
5 DATED: November \_\_, 2016

7 By:

Davit Pitshikyan  
Plaintiff

8 DATED: November 9, 2016

10 By:

  
Dependable Highway Express, Inc.  
Defendant

13 DATED: November \_\_, 2016

HUMPHREY & RIST, LLP

15 By:

Christina Humphrey  
Attorney for Plaintiff  
Davit Pitshikyan

18 DATED: November \_\_, 2016

TOWER LEGAL, PC

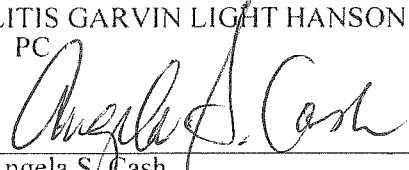
20 By:

James A. Clark,  
Attorney for Plaintiff  
Davit Pitshikyan

23 DATED: November 10, 2016

SCOPELITIS GARVIN LIGHT HANSON &  
FEARY, PC

25 By:

  
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Dependable Highway Express, Inc.

# Exhibit 1



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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO**

DAVIT PITSHIKYAN, individually and on  
behalf of others similarly situated,

Plaintiff,

v.

DEPENDABLE HIGHWAY EXPRESS,  
INC., a California Corporation, and DOES 1  
through 25, inclusive,

Defendants.

CASE NO.: 34-2015-00182832

**FIRST AMENDED COMPLAINT FOR:**

- 1. DECLARATORY RELIEF;**
- 2. REIMBURSEMENT OF BUSINESS  
EXPENSES AND UNLAWFUL  
DEDUCTIONS OF WAGES;**
- 3. RECOVERY OF UNPAID  
MINIMUM WAGES;**
- 4. RECOVERY OF UNPAID WAGES  
AT THE DESIGNATED RATE;**
- 5. QUANTUM MERUIT/UNJUST  
ENRICHMENT;**
- 6. FAILURE TO PROVIDE MEAL  
PERIODS;**
- 7. FAILURE TO PROVIDE REST  
PERIODS;**
- 8. FAILURE TO TIMELY FURNISH  
ACCURATE ITEMIZED WAGE  
STATEMENTS;**
- 9. FOR WAITING TIME PENALTIES  
(CALIFORNIA LABOR CODE §§  
201-203);**
- 10. VIOLATION OF CALIFORNIA  
BUSINESS AND PROFESSIONS  
CODE § 17200 ET. SEQ.**
- 11. CIVIL PENALTIES**

**DEMAND FOR JURY TRIAL**

1 Plaintiff DAVIT PITSHIKYAN, by and through his counsel, individually and on behalf  
2 of others similarly situated ("Plaintiff"), hereby files this Complaint against Defendant  
3 DEPENDABLE HIGHWAY EXPRESS., INC., a California corporation ("Defendant" or  
4 "DHE") and DOES 1 through 25 (collectively, "Defendants"), and pleads as follows:

5 **I. NATURE OF THE CASE**

6 1. This action is brought by Plaintiff against Defendants in order to halt  
7 Defendants' unlawful practice of misclassifying its employee truck drivers as independent  
8 contractors. By misclassifying its employees as independent contractors, Defendants have  
9 sought to avoid various duties and obligations owed to employees under the California Labor  
10 Code and Industrial Welfare Commission for the Transportation Industry wage orders ("IWC  
11 Wage Order(s)"), including: the duty to indemnify employees for all expenses and losses  
12 necessarily incurred in connection with their employment (Cal. Labor Code § 2802; IWC Wage  
13 Order No. 9, §§ 8-9.); the duty to not require illegal cash bonds (Cal. Labor Code § 406); the  
14 duty to avoid coercion in the purchase of necessary equipment, materials, and services (Cal.  
15 Labor Code § 450.); the duty to pay minimum wages for all hours worked (Cal. Labor Code §§  
16 1182.12, 1194, 1194.2, 1197; IWC Wage Order No. 9, § 4.); the duty to pay in accordance with  
17 the designated wage scale (Cal. Labor Code §§ 221, 223.); the duty to provide off-duty meal  
18 periods (Cal. Labor Code §§ 226.7, 512, 516; IWC Wage Order No. 9, § 11.); the duty to  
19 provide rest periods (Cal. Labor Code §§ 226.7, 512, 516; IWC Wage Order No. 9, § 12.); the  
20 duty to timely furnish accurate, itemized wage statements (Cal. Labor Code § 226.); the duty to  
21 pay wages due on termination (Cal. Labor Code §§ 201-203.); and for violation of the  
22 California Unfair Competition Law (Cal. *Bus. & Prof. Code* § 17200, *et seq.*)

23 2. A four year statute of limitation applies to the UCL claim; shorter periods may  
24 apply to other claims.

25 3. As described more specifically below, the putative class consists of all current  
26 and former truck drivers who were (a) classified by Defendants as "independent contractors;"  
27 (b) assigned to Defendants' operating terminal in California; and/or (c) residents of the State of  
28 California ("Drivers").

1  
2 4. Defendants operate their trucking business throughout the entirety of California.

3 5. Within four years preceding the filing of this Complaint, Defendants retained and  
4 exercised pervasive control over their freight transport operations and Drivers. By exercising  
5 such control over Drivers, Drivers were actually Defendants' employees under California law  
6 and were entitled to the protections afforded non-exempt employees under the California Labor  
7 Code.

8 6. Throughout the relevant time period, and with certain defined exceptions,  
9 Defendants' compensation schemes, which included mileage-based and/or activity-based pay  
10 packages, did not fully compensate Drivers for all hours worked.

11 7. Throughout the relevant time period, Defendants paid Drivers for driving time as  
12 a piece-rate amount calculated based on mileage and the weight of the cargo for delivery.

13 8. Defendants did not, however, compensate Drivers for all remaining hours  
14 worked each day. With limited defined exceptions, Defendants did not compensate Drivers for  
15 other routine non-driving work tasks, including, without limitation, inspecting vehicles, fueling  
16 vehicles, and completing daily paperwork (collectively referred to herein as "Common Unpaid  
17 Tasks"). Additionally, Defendants did not compensate Drivers for moving vehicles to the  
18 loading dock, retrieving and sorting bills of lading for the customers to fill out, and scanning the  
19 loads into a handheld device provided to Drivers by Defendant (collectively referred to herein  
20 as "Preparation Tasks").

21 9. The failure to pay minimum wages to Drivers for hours worked violated  
22 California Labor Code, sections 1182.12, 1194 and 1197; IWC Wage Order, number 9, section  
23 4; and the UCL.

24 10. The failure to pay at least minimum wages to Drivers for each and every hour  
25 worked, warrants liquidated damages under California Labor Code, section 1194.2.

26 11. Likewise, the failure to pay Drivers for each and every hour worked at  
27 designated rates violated California Labor Code, sections 221 and 223; IWC Wage Order,  
28 number 9; and the UCL.

1           12. As a matter of policy and/or practice, Defendants also failed to accurately report  
2 on employee's itemized statements the correct gross wages, the total hours worked, the proper  
3 hourly rates, and/or the corresponding number of hours worked at each hourly rate, and  
4 Defendants failed to keep accurate records of meal and rest break periods, all in violation of the  
5 California Labor Code, section 226; IWC Wage Order, number 9, section 7; and the UCL.

6           13. The failure to provide accurate hourly wage statements warrants statutory  
7 penalties under California Labor Code, section 226(e).

8           14. Also throughout the relevant time period and as a matter of policy and/or  
9 practice, Defendants regularly:

10           a. Failed to provide Drivers with a first meal period of not less than thirty  
11 (30) minutes during which they were relieved of all duty before working more  
12 than five (5) hours;

13           b. Failed to provide Drivers with a second meal period of not less than thirty  
14 (30) minutes during which they were relieved of all duty before working more  
15 than ten (10) hours per day; and

16           c. Failed to pay Drivers one hour of pay at their regular rate of  
17 compensation for each workday that a meal period was not provided.

18           15. Also throughout the relevant time period and as a matter of policy and/or  
19 practice, Defendants regularly:

20           a. Failed to provide paid rest periods of ten (10) minutes during which  
21 Drivers were relieved of all duty for each four (4) hours of work; and

22           b. Failed to pay Drivers one (1) hour of pay at their regular rate of  
23 compensation for each workday that a rest period was not permitted.

24           16. The failure to permit and provide meal periods and rest periods as described  
25 herein violated California Labor Code sections 226.7, 512 and 516; California IWC Wage  
26 Order, number 9, sections 11 and 12; and the UCL.

27           17. Further, throughout the relevant time period and as a matter of policy and/or  
28 practice, Defendants failed to indemnify Drivers for employment-related expenses including,

1 but not limited to, operational costs associated with the vehicles, including, among others, fuel,  
2 truck payments for use of truck, cargo loss or damage, licensing and liability and other  
3 insurance covering work place injuries. Defendants also took deductions from Drivers'  
4 compensation to cover some or all of those expenses

5 18. Also throughout the relevant time period and as a matter of policy and/or  
6 practice, Defendants regularly failed to indemnify Drivers for all necessary expenditures and  
7 losses incurred by Drivers in direct consequence of the discharge of their duties and in  
8 obedience to the direction of Defendants. (Cal. Lab. Code § 2802.) Defendants unlawfully took  
9 deductions from Drivers' compensation to cover ordinary business expenses of Defendants, as  
10 described above.

11 19. The failure to indemnify Drivers from such losses and expenditures violated  
12 California Labor Code section 2802; California IWC Wage Order, number 9, section 8, and the  
13 UCL and entitles Drivers to reimbursement of their necessary expenditures, plus interest,  
14 reasonable costs and attorneys' fees and costs under California Labor Code section 2802(c).

15 20. California Labor Code §406 provides: [A]ny property put up by an employee, or  
16 applicant as part of the contract of employment, directly or indirectly, shall be deemed to be put  
17 up by an as a bond and is subject to the provision of this article whether the property is put up  
18 on a note or as a loan or an investment and regardless of the wording of the agreement under  
19 which it is put up.

20 21. DHE requires Drivers to utilize their own personal vehicle and insurance, and  
21 other business expenses, which constitutes an illegal cash bond as defined under Labor §406.

22 22. Drivers seek reimbursement for business expenses unlawfully deducted from  
23 their compensation according to proof, plus interest, penalties, attorneys' fees, and costs against  
24 Defendants as provided by the California Labor Code and/or other statutes.

25 23. Also throughout the relevant time period and as a matter of policy and/or  
26 practice, Defendants regularly failed to pay all compensation due and owing to Drivers upon  
27 termination of employment, as required by California Labor Code sections 201 and 202. As a  
28 result, Defendants are liable for accrued wages due upon termination, and waiting time penalties

owed in accordance with California Labor Code section 203.

24. In this putative class action, Plaintiff seeks, for himself and for all others similarly situated, declaratory relief, damages and penalties for violations of the California Labor Code and applicable California IWC Wage Orders, and restitution of all sums wrongfully obtained by Defendants in violation of the UCL.

## II. PARTIES

### A. *Plaintiff Davit Pitshikyan*

25. Plaintiff Davit Pitshikyan, is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. During the relevant time period, Mr. Pitshikyan worked for Defendants from their warehouse based in Sacramento, California, and was misclassified as an independent contractor. Mr. Pitshikyan currently resides in Sacramento County, CA.

26. Plaintiff Davit Pitshikyan seeks damages including, but not limited to, wages, restitution for unpaid wages, penalties, reimbursement and other compensation from Defendants for the time period he worked for Defendants and was misclassified as an independent contractor because, like the other members of the putative classes, Defendants:

- a. Misclassified Mr. Pitshikyan as an “independent contractor;”
- b. Failed to reimburse Mr. Pitshikyan for business expenses;
- c. Required Mr. Pitshikyan to be subjected to an illegal cash bond;
- d. Failed to timely pay Mr. Pitshikyan minimum wages or designated rates for all hours worked and/or miles driven;
- e. Failed to provide Mr. Pitshikyan proper meal and rest periods or premium wages in lieu of the same;
- f. Failed to pay Mr. Pitshikyan for time spent on rest periods;
- g. Failed to furnish Mr. Pitshikyan with accurate itemized wage statements;
- h. Failed to timely pay Mr. Pitshikyan all wages due to him at the time of his termination from employment; and/or
- i. Subjected Mr. Pitshikyan to unfair business practices within the meaning

of California Business and Professions Code, section 17200 *et. seq.*

***B. Defendant Dependable Highway Express Inc.***

27. Plaintiff is informed and believes and based thereon alleges, Dependable Highway Express, Inc. (“DHE”) is a California Corporation with its principal place of business at 2555 E. Olympic Boulevard, Los Angeles, CA 90023, and is therefore a citizen of the State of California. Plaintiff is informed and believe DHE has transacted and continues to transact business throughout the State of California.

***C. Defendants DOES 1 through 25, Inclusive***

28. DOES 1 through 25 inclusive are now and/or at all times mentioned in this Complaint were, licensed to do business and/or actually doing business in the State of California. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 25, inclusive and for that reason, DOES 1 through 25 are sued under such fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 10 are believed to be business entities who were also co-employers of the Plaintiff and the putative Class herein.

***D. All Defendants***

29. Plaintiff is informed and believes, and based upon such information and belief alleges, that the Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

30. Plaintiff is further informed and believes, and based upon such information and belief alleges, that at all times herein mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within the course and scope of said employment and/or agency; furthermore, that each and every Defendant herein, while acting as a high corporate officer, director and/or managing agent, principal and/or employer, expressly directed, consented to, approved, affirmed and ratified each and every action taken by the other co-

Defendants, as herein alleged and was responsible in whole or in part for the matters referred to herein.

31. Plaintiff is further informed and believes, and based upon such information and belief alleges, that at all times herein mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated and the general public, to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

32. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuit of said joint venture, partnership and common enterprise and, as such were co-employers of the Plaintiff and the putative Class herein.

33. Defendants, and each of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

### III. JURISDICTION AND VENUE

34. The California Superior Court has jurisdiction in the matter because the claims exceed the jurisdictional minimum of this court and Plaintiff and Defendants are both residents of the State of California. Further, the issues herein are based on California Statutes and law including the California Labor Code and the California Unfair Competition Law.

35. Venue is proper in this judicial district and in the County of Sacramento because Defendants transact business in this county, and it is the County in which the injuries occurred giving rise to the current causes of action.

### IV. BACKGROUND

#### A. *Defendants' Misclassification of Drivers*

36. Defendants provide transportation services throughout California. Defendants' Drivers were labeled "independent contractors".

37. Throughout the relevant time period, Defendants' Drivers were generally



1 responsible for driving trucks and delivering freight from one point to another. Their work  
2 tasks generally included, among others, fueling and maintaining vehicles; using the handheld  
3 computer system provided by Defendants to organize loads and prepare for delivery; verifying  
4 loads; waiting for customers; calling and receiving updates from DHE managers regarding  
5 routes and loads; and, of course, driving.

6 38. Throughout the relevant time period, Defendants retained and exercised  
7 significant control over the details of Drivers' work. As such, under California law, Drivers  
8 were Defendants' employees, not independent contractors.

9 39. The principal test of an employment relationship is whether the person to whom  
10 service is rendered has the **right to control** the manner and means of accomplishing the result  
11 desired. *See Ayala v. Antelope Valley Newspaper Inc.*, 59 Cal.4th 522, 533 (2014); *see also S.*  
12 *G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989).

13 40. Throughout the relevant time period, Drivers were integral to the operation of  
14 Defendants' core business; they were hired to pick up, transport and deliver freight in California  
15 based on times, locations and for amounts determined by Defendants.

16 41. Also, throughout the relevant time period, Drivers were provided with  
17 Defendants' policies and procedures, which detailed various rules that DHE's drivers were  
18 required to abide. When Drivers did not follow Defendants' policies and procedures, they were  
19 subject to discipline.

20 42. Also, throughout the relevant time period, Defendants unilaterally set the prices  
21 charged to its customers, as well as the compensation rates paid to Drivers. Drivers had no  
22 control over the prices charged to Defendants' customers, nor did they have any control over the  
23 amount of their own compensation.

24 43. Also, throughout the relevant time period, Defendants required that the Drivers  
25 display Defendants' logo on their trucks during all deliveries.

26 44. Also, throughout the relevant time period, Defendants encouraged that the  
27 Drivers display Defendants' logo on their uniform.

28 45. Also, throughout the relevant time period, Defendants controlled Drivers' every

1 move. Defendants determined the number and the substantial order of all delivery stops and  
2 scheduled the times for each pick up and delivery. Defendants prohibited Drivers from hiring  
3 back up or substitute Drivers, without Defendants' approval. Defendants also prohibited Drivers  
4 from allowing any other parties into the truck during deliveries and from hiring employees to  
5 help unload deliveries.

6 46. Also, throughout the relevant time period, Defendants required Drivers to  
7 maintain handheld computers with GPS trackers on them at all times during work hours. Using  
8 the GPS equipment, Defendants kept track of the Drivers every location.

9 47. Also, throughout the relevant time period, Defendants often required that the  
10 Drivers change their routes while they were out driving.

11 48. Also, throughout the relevant time period, Defendants required Drivers to return  
12 to the warehouse at the end of each shift and to leave their truck on the company premises.

13 49. Also, throughout the relevant time period, Drivers were subject to discipline  
14 and/or retaliation, including termination, for refusing to accept loads.

15 50. Also, throughout the relevant time period, Drivers were required to give two-  
16 weeks notice in order to take a day off.

17 51. Also, throughout the relevant time period, Drivers were assigned a DHE  
18 manager by Defendants, who would control how the Drivers' performed their duties.

19 52. Also, throughout the relevant time period, Defendants also required Drivers' to  
20 carry auto liability, property damage and cargo insurance policies, and required them to  
21 personally pay for fuel, cost of truck rental, and cell phones.

22 53. Also, throughout the relevant time period, Defendants issued paychecks to  
23 Drivers, as individuals, not as business entities.

24 54. Also, throughout the relevant time period, Defendants did not require Drivers to  
25 maintain a business license.

26 ***B. Defendants Require Drivers to Cover Defendants' Business Costs***

27 55. At all times relevant hereto, California Labor Code section 2802 required  
28 employers to indemnify their employees for "all necessary expenditures or losses incurred by

1 the employee in direct consequence of the discharge of his or her duties, or of his or her  
2 obedience to the directions of the employer...”

3 56. California IWC Wage Order, No. 9, section 8 prohibits employers from making  
4 any deduction from the wage of an employee for any unintentional cash shortage, breakage, or  
5 loss of equipment. California IWC Wage Order, No. 9, section 9 requires employers to maintain  
6 tools and equipment required by the employer or that are necessary to the performance of the  
7 job.

8 57. California Labor Code §406 provides: [A]ny property put up by an employee, or  
9 applicant as part of the contract of employment, directly or indirectly, shall be deemed to be put  
10 up by an as a bond and is subject to the provision of this article whether the property is put up  
11 on a note or as a loan or an investment and regardless of the wording of the agreement under  
12 which it is put up.

13 58. Defendants require Drivers to personally rent vehicles and to utilize their own  
14 personal insurance, and other business expenses, which constitutes an illegal cash bond as  
15 defined under Labor §406.

16 59. Throughout the relevant time period, Defendants required Plaintiff to pay  
17 employment expenses including, but not limited to, payments for the trucks used to complete  
18 jobs, fuel, and cell phones.

19 ***C. Deducted Their Business Expenses From Drivers’ Pay Checks***

20 60. Throughout the relevant time period, Defendants took deductions from Plaintiff’s  
21 paychecks for work-related expenditures or losses incurred by Plaintiff in direct consequence of  
22 Plaintiff’s pick up, transport and delivery of freight in California based on times, locations and  
23 for amounts determined by Defendants.

24 61. Throughout the relevant time period, Defendants took deductions from Drivers’  
25 pay for including, but not limited to, insurance.

26 ***D. Defendants’ Failure to Pay Minimum Wages and Designated Rates***

27 62. California IWC Wage Order, No. 9 defines “hours worked” to mean “the time  
28 during which an employee is subject to the control of an employer, and includes all the time the

1 employee is suffered or permitted to work, whether or not required to do so.”

2 63. Throughout the relevant time period, Defendants suffered or permitted Drivers to  
3 work portions of the day for which Defendants failed to compensate them. Drivers were subject  
4 to Defendants’ control during this time.

5 64. California Labor Code section 1182.12 and California IWC Wage Order, No. 9,  
6 section 4 provide that on and after July 1, 2014, the minimum wage shall be not less than eight  
7 dollars (\$9.00) per hour.

8 65. California Labor Code section 1194(a) provides in relevant part:  
9 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than  
10 the legal minimum wage [] is entitled to recover in a civil action the unpaid balance of the full  
11 amount of this minimum wage [], including interest thereon, reasonable attorney’s fees, and  
12 costs of suit.”

13 66. California Labor Code section 1194.2(a) provides in relevant part: “In any action  
14 under section 1193.6 or section 1194 to recover wages because of the payment of a wage less  
15 than the minimum wage fixed by an order of the commission, an employee shall be entitled to  
16 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest  
17 thereon.”

18 67. California Labor Code section 1197 provides: “The minimum wage for  
19 employees fixed by the commission is the minimum wage to be paid to employees, and the  
20 payment of a less wage than the minimum so fixed is unlawful.”

21 68. Plaintiff is informed and believes, and thereon alleges, that Defendants’  
22 compensation schemes do not fully compensate Drivers for all hours spent performing their job  
23 duties.

24 69. Throughout the relevant time period, among other tasks, Drivers were often  
25 required to wait at or near customer facilities in advance of an appointment for delivery or  
26 pickup, and/or they were required to wait at or near designated facilities at Defendants’  
27 warehouse for shipping or receiving personnel to accept and/or provide paperwork, and/or they  
28 were required to wait for a customer to commence loading or unloading a shipment.

1 Additionally, before Drivers were able to begin deliveries, they were required to, among other  
2 things, retrieve and sort bills of lading pursuant to DHE policy, and scan loads into a handheld  
3 device provided to Drivers by Defendants.

4 70. Also throughout the relevant time period and as a matter of policy and/or  
5 practice, Defendants failed to pay overtime to Drivers.

6 71. At all relevant times herein, California Labor Code ' ' 1182.12, 1194 and 1197  
7 and IWC Wage Order, number 9 § 4, provided for payment of state-law minimum wage and  
8 overtime at the rate described therein.

9 72. The failure to pay at least minimum wages, and overtime wages, to Drivers for  
10 each and every hour worked violated California Labor Code sections 1182.11-1182.12, 1194,  
11 1194.2, and 1197; California IWC Wage Order, No. 9, section 4; and the UCL.

12 73. The failure to pay designated wages to Drivers for each and every hour worked  
13 violated California Labor Code sections 221 and 223; California IWC Wage Order, No. 9 and 4;  
14 and the UCL.

15 ***E. Defendants' Failure to Provide Meal Periods***

16 74. At all times relevant hereto, California Labor Code sections 226.7 and 512 and  
17 California IWC Wage Order, No. 9, section 11 required employers to provide employees with a  
18 first meal period of not less than thirty (30) minutes during which they must be relieved of all  
19 duty before working more than five (5) hours and a second meal period of not less than thirty  
20 (30) minutes during which they must be relieved of all duty before working more than ten (10)  
21 hours per day.

22 75. At all times relevant hereto, California Labor Code section 226.7(b) and  
23 California IWC Wage Order No. 9, section 11 required employers to pay one hour of additional  
24 pay at the regular rate of compensation for each employee and each workday that a proper meal  
25 period is not provided.

26 76. Throughout the relevant time period, Defendants failed to schedule breaks, keep  
27 records of break times, and did not inform Drivers of their rights to a thirty (30) minute  
28 uninterrupted meal break under California law.

1           77.     Also throughout the relevant time period, Defendants regularly failed to provide  
2 a timely thirty (30) minute off-duty meal period to Drivers when working more than five (5)  
3 hours in a day.

4           78.     Throughout the relevant time period, Defendants further regularly failed to  
5 provide a second timely thirty (30) minute meal period to Drivers who worked more than ten  
6 (10) hours in a day.

7     ***F.     Defendants' Failure to Provide Rest Periods***

8           79.     At all times relevant hereto, California Labor Code section 226.7 and California  
9 IWC Wage Order, number 9, section 12 required employers to authorize, permit, and provide a  
10 ten (10) minute paid rest period for each four (4) hours of work, during which employees are  
11 relieved of all duty.

12          80.     At all times relevant hereto, California Labor Code section 226.7(b) and  
13 California IWC Wage Order, number 9, section 12 required employers to pay one hour of  
14 additional pay at the regular rate of compensation for each employee and each workday that a  
15 proper rest period is not provided.

16          81.     Throughout the relevant time period, Defendants regularly failed to provide a ten  
17 (10) minute paid rest period for each four (4) hours of work, during which Drivers were relieved  
18 of all duty.

19          82.     As a result of Defendants' piece-rate compensation scheme, Defendants failed to  
20 compensate Drivers for break time when breaks were not taken. Defendants' compensation  
21 scheme did not permit paid rest breaks as mandated by California law.

22          83.     Defendants regularly failed to pay one hour of additional pay at the regular rate  
23 of compensation for each Driver and each workday that a proper rest period was not provided.

24     ***G.     Defendants' Failure to Maintain Adequate Employment Records and Failure to***  
25         ***Provide Accurate Itemized Wage Statements***

26          84.     At all times relevant hereto, California Labor Code section 226 and California  
27 IWC Wage Order, number 9, section 7 required employers to maintain adequate employment  
28 records and provide employees with accurate itemized wage statements showing gross wages,

total hours worked, all applicable hourly rates worked during each pay period, the corresponding number of hours worked at each hourly rate, and meal breaks taken.

85. Wage statements provided to Drivers by Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of the California Labor Code section 226, California IWC Wage Order number 9, section 7, and the UCL.

86. Moreover, Defendants did not maintain adequate records of all wages earned, hours worked and meal breaks taken.

***H. Defendants' Failure to Pay Wages Due Upon Termination of Employment***

87. At all times relevant hereto, California Labor Code section 201 required an employer that discharges an employee to pay all compensation due and owing to said employee immediately upon discharge. California Labor Code section 202 requires an employer to pay an employee who quits all compensation due and owing to said employee within seventy-two (72) hours of an employee's resignation. California Labor Code section 203 provides that if an employer willfully fails to pay all compensation promptly upon discharge or resignation, as required under sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

88. Defendants willfully and knowingly failed to pay Drivers and Plaintiff, individually, upon termination of employment, all accrued compensation including repayment of all unlawful deductions from wages, payment of minimum wage compensation and missed meal and rest periods compensation.

89. Defendants further willfully failed to timely pay all compensation owed to Drivers and Plaintiff, individually, upon termination, including, but not limited to, wages owed to Drivers and Plaintiff, individually, for performing the Unpaid Tasks. As a result, Defendants are liable both for accrued wages due at termination and for waiting time penalties.

***I. Facts Regarding Willfulness***

90. Plaintiff is informed and believes and based thereon alleges that Defendants are and were advised by skilled lawyers, other professionals, employees with human resources background and advisors with knowledge of the requirements of California and federal wage

and hour laws.

91. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants knew or should have known, that Drivers, including Plaintiff, were Defendants' employees under California law.

92. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants knew or should have known, that Drivers, including Plaintiff, were entitled to reimbursement for all work-related expenditures or losses incurred by Drivers in direct consequence of Drivers' pick up, transport and delivery of freight for Defendants.

93. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants had a consistent policy or practice of failing to compensate Drivers, including Plaintiff, for all hours worked and for all miles driven.

94. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants knew or should have known, that their Drivers, including Plaintiff, were entitled to receive duty-free meal periods within the first five (5) hours of any shift of six (6) or more hours worked, and that any failure to do so requires Defendants to pay Drivers one (1) hour of wages per day for untimely, missed, or on-duty meal periods.

95. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants knew or should have known, that Drivers, including Plaintiff, were and are entitled to one (1) ten (10) minute rest break for each shift of four (4) hours or more, and that any failure to allow said breaks requires Defendants to pay Drivers, including Plaintiff, one (1) hour of wages per day for missed or on-duty rest breaks.

## **V. CLASS ACTION ALLEGATIONS**

96. Pursuant to California Code of Civil Procedure, section 382, this action is brought and may be properly maintained as a class action. This action satisfies the numerosity, ascertainability, commonality, typicality, adequacy, predominance, and superiority requirements of the California Class Action Statute.

### **A. Class Definition**

97. Plaintiff brings this action as a class action on behalf of the Class of individuals



defined as follows:

98. All current and former California-based truck drivers for Defendants from four years prior to the filing of this Complaint up to and including the date judgment is rendered in this action who were classified by Defendants as “independent contractors”.

a. “California based” refers to Drivers:

i. who had a residential address in California at any time during the Class Period; and/or

ii. who were assigned or associated with any warehouses and/or service centers in California at any time during the Class Period.

b. The phrase “assigned or associated with any warehouses and/or service centers” includes any and all Drivers listed in Defendants’ database in connection with a warehouse or service center.

99. Plaintiff further seeks to establish the following subclass:

a. The Former Driver Subclass, which is defined as all Drivers who are no longer employed by Defendants herein.

***B. Numerosity***

100. Plaintiff is informed and believes and based on such information and belief alleges, that during the class period, hundreds of class members have worked for Defendants as independent contractors. Because so many persons have worked for Defendants in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is impossible and/or impracticable. While the exact number and specific identities of the member class is presently unknown to Plaintiff, this information may readily be ascertained through inspection of Defendants’ business records.

***C. Commonality***

101. Plaintiff is informed and believes and based on such information and belief alleges numerous questions of law and/or fact are common to all members of the class including, without limitation:

a. Whether Drivers served Defendants as employees rather than independent

1 contractors under California law;

2 b. Whether as a result of Defendants' misclassification of Drivers as independent  
3 contractors, Defendants failed to indemnify Drivers for necessarily incurred  
4 employment-related expenses and losses, in violation of California Labor Code,  
5 section 2802;

6 c. Whether as a result of Defendants' misclassification of Drivers as "independent  
7 contractors," Defendants made deductions from the compensation paid to  
8 Drivers, in violation of California Labor Code, section 2802;

9 d. Whether as a result of Defendants' misclassification of Drivers as "independent  
10 contractors," Defendants required drivers to post an "illegal cash bond," in  
11 violation of California Labor Code, section 403.

12 e. Whether as a result of Defendants' misclassification of Drivers as "independent  
13 contractors," Defendants required, encouraged, suffered, or permitted Drivers to  
14 perform certain work-related duties without compensation equal to at least the  
15 California minimum wage;

16 f. Whether as a result of Defendants' misclassification of Drivers as "independent  
17 contractors," Defendants knew or should have known that their Drivers regularly  
18 performed certain work-related duties without compensation equal to at least the  
19 California minimum wage;

20 g. Whether as a result of Defendants' misclassification of Drivers as "independent  
21 contractors," Defendants violated California Labor Code, sections 1182.11 and  
22 1194 and IWC Wage Order, number 9, section 4 and by failing to pay Drivers  
23 minimum wage compensation for all hours worked;

24 h. Whether as a result of Defendants' misclassification of Drivers as "independent  
25 contractors," Defendants violated California Labor Code, sections 221 and 223  
26 by failing to pay Drivers at the designated rate for all hours worked;

27 i. Whether as a result of Defendants' misclassification of Drivers as "independent  
28 contractors," Defendants failed to provide adequate off-duty meal periods and

meal period compensation, in violation of California Labor Code, sections 226.7, 512 and 516 and IWC Wage Order, number 9, section 11;

j. Whether as a result of Defendants' misclassification of Drivers as "independent contractors," Defendants failed to provide rest periods and rest period compensation, in violation of California Labor Code, sections 226.7, 512 and 516 and IWC Wage Order, number 9, section 12;

k. Whether as a result of Defendants' misclassification of Drivers as "independent contractors," Defendants knowingly and intentionally failed to provide Drivers with itemized statements showing total hours worked with each payment of wages, as required by California Labor Code, section 226 and IWC Wage Order, number 9, section 7;

l. Whether as a result of Defendants' misclassification of Drivers as "independent contractors," Defendants violated California Labor Code, section 1174 and IWC Wage Order, number 9, section 7 by failing to maintain documentation of the actual hours worked each day by Drivers;

m. Whether as a result of Defendants' misclassification of Drivers as "independent contractors," Defendants violated California Labor Code, sections 201 and 202, by failing, upon termination, to timely pay Drivers all wages due;

n. Whether Defendants' conduct constitutes unlawful, unfair and/or fraudulent business practices under the UCL;

o. Whether Class members are entitled to compensatory damages requiring Defendants to pay Class members for unpaid minimum wages or wages at designated rates;

p. Whether Class members are entitled to liquidated damages from Defendants for unpaid minimum wages under California Labor Code, section 1194.2;

q. Whether Class members are entitled to restitution of minimum wages, or wages at less than the designated rates, withheld by Defendants;

r. Whether Class members are entitled to restitution of meal period wages;

- s. Whether Class members are entitled to restitution for rest period wages;
- t. Whether Defendants are liable for prejudgment interest;
- u. Whether Defendants are liable for attorneys' fees and costs; and
- v. Whether Defendants are liable to Class members for statutory penalties for unpaid wages (*e.g.* under California Labor Code, sections 203 and 226(e)).

***D. Typicality***

102. Plaintiff is informed and believes and based on such information and belief alleges that Plaintiff's claims are typical of the claims of all members of the Class whom they seek to represent. Defendants treated both Plaintiff and all members of the Class in a virtually identical manner with respect to the violations of law asserted herein. These violations of law arise out of Defendants' common course of conduct in *inter alia* (a) misclassifying Drivers as independent contractors; (b) requiring members of the Class to work hours for which they were not properly compensated in terms of basic minimum wages and/or agreed rates; (c) requiring members of the class to pay Defendants' business expenses, (d) making unlawful deductions from Drivers' paychecks; (e) requiring members of the Class to forego duty free meal breaks and paid rest breaks to which they were entitled; (f) receive inaccurate wage statements; and (g) endure unfair business practices within the meaning of the UCL.

***E. Adequacy of Representation***

103. Plaintiff is informed and believes and based on such information and belief alleges that Plaintiff will fairly and adequately protect the interests of the members of the Class they seek to represent. Plaintiff is an adequate representative of the Class because Plaintiff is a member of the Class and because Plaintiff's interests do not conflict with the interests of the members of the Class he seeks to represent. Plaintiff has retained counsel competent and experienced in the prosecution of complex class actions and Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the Class. Plaintiff and his counsel will fairly and adequately protect the interests of the Class members.

***F. Superiority***

104. Plaintiff is informed and believes and based on such information and belief

1 alleges, that this action is properly brought as a class action, not only because the prerequisites  
2 of the California Class Action Statute and common law related thereto are satisfied (as outlined  
3 above), but also because of the following:

- 4 a. The prosecution of separate actions by or against individual members of the  
5 Class would create risk if inconsistent or varying adjudications with respect to  
6 individual members of the Class which would establish incompatible standards  
7 for conduct for the party opposing the Class;
- 8 b. Adjudications with respect to individual members of the Class would, as a  
9 practical matter, be dispositive of the interests of the interests of the other  
10 members not pursuant to California Labor Code, sections 1182.12, 1194, 1197,  
11 and the applicable parties to the adjudications or substantially impair or impede  
12 their ability to protect their interests;
- 13 c. Defendants have acted or refused to act on grounds generally applicable to all  
14 members if the Class, making declaratory relief appropriate with respect to all of  
15 the Class;
- 16 d. Questions of law or fact common to the members of the Class predominate over  
17 any questions affecting only individual members; and
- 18 e. Class treatment is superior to other available methods for the fair and efficient  
19 adjudication of the controversy.

20 **FIRST CAUSE OF ACTION**

21 **DECLARATORY RELIEF**

22 **(On Behalf of Plaintiff and the Putative Class)**

23 **(Against All Defendants)**

24 105. Plaintiff hereby incorporates by reference each and every one of the allegations  
25 contained in the preceding paragraphs as if the same were fully set forth herein.

26 106. An actual controversy has arisen between Plaintiff and the members of the  
27 putative class, on the one hand, and Defendants on the other, as to whether Defendants  
28 misclassified them as “independent contractors” when in fact they were Defendants’ employees.

1           107. Plaintiff and the members of the putative class further seek declaratory relief  
2 against all Defendants herein and in Plaintiff's favor, which declares Defendants' practices to be  
3 unlawful, and which provides for recovery of all sums determined by this Court to be owed by  
4 Defendants, and each of them, to Plaintiff and the members of the putative class.

5           108. Plaintiff and the members of the putative Class members also request relief as  
6 described below.

7                                   **SECOND CAUSE OF ACTION**

8           **REIMBURSEMENT OF BUSINESS EXPENSES AND/OR PROHIBITED CASH BOND**

9                                   **(On Behalf of Plaintiff and the Putative Class)**

10                                   **(Against All Defendants)**

11           109. Plaintiff hereby incorporates by reference each and every one of the allegations  
12 contained in the preceding paragraphs as if the same were fully set forth herein.

13           110. During the class period, Defendants required Representative Plaintiff and other  
14 putative class members to incur expenses related to the business operations of Defendants.

15           111. These expenditures were incurred in direct consequence of the discharge of the  
16 duties of Representative Plaintiff and putative class members, or of their obedience to the  
17 directions of the employer and have not yet been reimbursed by Defendants.

18           112. At all relevant times, Defendants were aware of and was under a duty to comply  
19 with various provisions of the California Labor Code including, but not necessarily limited to,  
20 §§406, 2800, and 2802(a).

21           113. California Labor Code §406 provides: [A]ny property put up by an employee, or  
22 applicant as part of the contract of employment, directly or indirectly, shall be deemed to be put  
23 up by an as a bond and is subject to the provision of this article whether the property is put up  
24 on a note or as a loan or an investment and regardless of the wording of the agreement under  
25 which it is put up.

26           114. California Labor Code §2800 provides: "An employer shall in all cases  
27 indemnify his employee for losses caused by the employer's want of ordinary care."

28           115. California Labor Code ' 2802(a) provides: "An employer shall indemnify his or

1 her employee for all necessary expenditures or losses incurred by the employee in direct  
2 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
3 the employer....”

4 116. For the three (3) years preceding the filing of this lawsuit, Plaintiff and members  
5 of the putative Class have been employed by Defendants within the State of California. By  
6 requiring Representative Plaintiff and putative class members to incur uncompensated expenses  
7 in direct consequence of the discharge of their duties, Representative Plaintiff and putative class  
8 members were forced and/or brought to contribute to the capital and expenses of the  
9 Defendants’ business which is legally a cash bond and which must be refunded by Defendants  
10 to each putative class member. Similarly, by failing to reimburse Representative Plaintiff and  
11 putative class members for losses caused by Defendants’ failure to exercise ordinary care,  
12 Representative Plaintiff and putative class members have been forced to contribute to the capital  
13 and expenses of Defendants’ business, in contravention of the law.

14 117. Defendants have violated California Labor Code ' 2802 and IWC Wage Order,  
15 number 9, section 8 by unlawfully taking deductions from Plaintiff’s and the Plaintiff Class’  
16 compensation to cover certain ordinary business expenses of Defendants including, but not  
17 limited to, insurance, and requiring Plaintiff and the Plaintiff class to pay for their trucks to use  
18 on the job, fuel, cell phones, and other expenses to be determined in discovery.

19 118. Because Defendants took unlawful deductions from Plaintiff’s and the Plaintiff  
20 Class’ compensation, they are liable to Plaintiff and the Plaintiff Class for the compensation that  
21 should have been paid but for the unlawful deductions, pursuant to California Labor Code,  
22 sections 221, 223, and 400-410, and IWC Wage Order, number 9 § 8.

23 119. California Labor Code §2802(b) and (c) provides for interest at the statutory post  
24 judgment rate of ten percent simple interest per annum from the date of the expenditure, plus  
25 attorneys’ fees to collect reimbursement.

26 120. Therefore, Representative Plaintiff and the Plaintiff Class seek reimbursement  
27 for expenditures and losses incurred as a direct consequence of the discharge of their duties, or  
28 of their obedience to the directions of the employer, plus return of all cash bonds or other

1 coerced investments in the business of the Defendants, with interest, at the statutory rate, plus  
2 attorneys' fees, penalties and costs.

3 121. Plaintiff and the other Class members also request relief as described below.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGE AND OVERTIME FOR ALL HOURS**  
6 **WORKED**

7 **(On Behalf of Plaintiff and the Putative Class)**

8 **(Against All Defendants)**

9 122. Plaintiff hereby incorporates by reference each and every one of the allegations  
10 contained in the preceding paragraphs as if the same were fully set forth herein.

11 123. Pursuant to California Labor Code ' ' 1182.12, 1194 and 1197 and IWC Wage  
12 Order, number 9 § 4, Plaintiff may bring a civil action for unpaid minimum wages directly  
13 against an employer.

14 124. At all relevant times herein, California Labor Code ' ' 1182.12, 1194 and 1197  
15 and IWC Wage Order, number 9 § 4, provided for payment of state-law minimum wage and  
16 overtime at the rate described therein.

17 125. Defendants' compensation scheme did not fairly compensate Drivers for all time  
18 worked including, but not limited to, drive time, fueling vehicles, maintaining vehicles, entering  
19 data into DHE's handheld computer systems, calling DHE managers and dispatch, and other  
20 tasks. As a result, Defendants suffered or permitted Plaintiff and the Plaintiff Class to perform  
21 work without compensation, while subject to Defendants' control.

22 126. Defendants have failed to maintain adequate time records as required by  
23 California Labor Code ' 1174(d) and IWC Wage Order, number 9 § 7(A).

24 127. Defendants owe Plaintiff and the Plaintiff Class minimum wages, overtime, and  
25 liquidated damages pursuant to California Labor Code ' ' 1182.12, 1194, 1194.2 and 1197,  
26 IWC Wage Order, number 9, section 4, due in amounts to be determined at trial during the three  
27 (3) years prior to the filing of this Complaint.

28 128. Plaintiff and the Plaintiff Class request payment of unpaid minimum wages and



overtime due in amounts to be determined at trial, interest, attorneys' fees and costs, against Defendants in a sum as provided by the California Labor Code and/or other statutes.

129. Plaintiff and the other Putative Class members also request relief as described below.

#### **FOURTH CAUSE OF ACTION**

##### **PAYMENT OF WAGE BELOW DESIGNATED RATE FOR ALL HOURS WORKED**

**(On Behalf of Plaintiff and the Putative Class)**

**(Against All Defendants)**

130. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

131. At all relevant times herein, the applicable California Labor Code sections referenced herein applied to Drivers employed with Defendants.

132. At all relevant times herein, California Labor Code section 223 provided "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

133. Defendants' compensation scheme purported to compensate Plaintiff and the members of the putative Class for all hours worked. In reality, Defendants suffered or permitted Plaintiff and the members of the putative Class to work portions of their day without compensation, while subject to Defendants' control.

134. California law requires employers to pay wages in accordance with a designated wage scale. Nevertheless, Defendants paid less than minimum wages and less than the agreed upon compensation owed to Plaintiff and the members of the putative Class, while purporting to pay the designated wage scale. As a result, Defendants' conduct violates California Labor Code sections 221 and 223.

135. Defendants owed and still owe Plaintiff and the members of the putative Class wages pursuant to the California Labor Code in amounts to be determined at trial for the hours worked during the Relevant time period.



1 relief as described below.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE MEAL PERIODS**

4 **(On Behalf of Plaintiff and the Putative Class)**

5 **(Against All Defendants)**

6 144. Plaintiff hereby incorporates by reference each and every one of the allegations  
7 contained in the preceding paragraphs as if the same were fully set forth herein.

8 145. Plaintiff is informed and believes and thereon alleges, that Plaintiff and the  
9 members of the putative Class regularly worked more than five (5) hours per shift and were  
10 entitled to a meal period of not less than thirty (30) minutes without duty. Plaintiff is further  
11 informed and believe and thereon alleges, that Plaintiff and the members of the putative Class  
12 regularly worked more than ten (10) hours per shift and were entitled to a second meal period of  
13 not less than thirty (30) minutes without duty.

14 146. Nevertheless, Plaintiff is informed and believes and thereon alleges, that  
15 Defendants routinely failed to provide Plaintiff and the members of the putative Class with such  
16 meal periods without duty, notwithstanding the fact that Plaintiff and the members of the  
17 putative Class had not waived their right to the same. Thus, Defendants failed to provide  
18 Plaintiff and the members of the putative Class with meal periods required by California Labor  
19 Code sections 226.7, 512, 516 and California IWC Wage Order, No. 9, section 11 and  
20 categorically failed to pay any and all meal period premium wages due.

21 147. Plaintiff and the members of the putative Class seek damages pursuant to  
22 California Labor Code ' 226.7(b) and California IWC Wage Order, number 9 section 11(D), in  
23 the amount of one additional hour of pay (premium wages) at the regular rate for each work day  
24 that the meal period is/was not provided to Plaintiff and any member of the putative Class, the  
25 cumulative sum of which is to be determined at trial.

26 148. Plaintiff and the members of the putative Class further seek penalties pursuant to  
27 California Labor Code ' 558(a) for Defendants' failure to provide such meal periods.

28 149. Plaintiff and the members of the putative Class seek prejudgment interest on all

amounts recovered herein pursuant to California Labor Code sections 218.6, 1194(a) and the California Civil Code sections 3287(b) and 3289.

150. Plaintiff and the members of the putative Class also request relief as described below.

**SEVENTH CAUSE OF ACTION**

**FAILURE TO PROVIDE REST PERIODS**

**(On Behalf of Plaintiff and the Putative Class)**

**(Against All Defendants)**

151. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

152. Plaintiff is informed and believes and thereon allege, that Plaintiff and the members of the putative Class were entitled to a paid rest period of not less than ten (10) minutes without duty for each and every four (4) hours worked during the workday.

153. Nevertheless, Plaintiff is informed and believes and thereon alleges, that Defendants routinely failed to provide Plaintiff and the members of the putative Class with such paid rest periods without duty, notwithstanding the fact that Plaintiff and the members of the putative Class had not waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members of the putative Class with rest periods required by California Labor Code sections 226.7, 512, and 516, California IWC Wage Order, No. 9 section 12 and categorically failed to pay any and all rest period premium wages due.

154. Plaintiff and the members of the putative Class seek damages pursuant to California Labor Code section 226.7(b) and California IWC Wage Order, number 9 section 12(B), in the amount of one additional hour of pay (premium wages) at the regular rate for each work day that the rest period is/was not provided to Plaintiff and any member of the putative Class, the cumulative sum of which is to be determined at trial.

155. Plaintiff and the members of the putative Class further seek penalties pursuant to California Labor Code section 558(a) for Defendants' failure to provide such rest periods.

156. Plaintiff and the members of the putative Class seek prejudgment interest on all

amounts recovered herein pursuant to California Labor Code sections 218.6 and 1194(a) and the California Civil Code sections 3287(b) and 3289.

157. Plaintiff and the other members of the putative Class also request relief as described below.

**EIGHTH CAUSE OF ACTION**

**FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

**(On Behalf of Plaintiff and the Putative Class)**

**(Against All Defendants)**

158. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

159. Defendants paid Plaintiff and the members of the putative Class on a piece-rate basis, typically on an activity and per-mile basis, with some variation thereon. However, as noted above, Defendants failed to pay Plaintiff and the members of the putative Class for all hours worked by Plaintiff and the members of the putative Class during the Relevant time period.

160. California Labor Code section 226(a) and California IWC Wage Order, number 9, section 7(B) require employers to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

161. Defendants knowingly and intentionally failed to furnish Plaintiff and members of the putative Class with timely, itemized statements showing the total hours worked, as required by California Labor Code section 226(a) and California IWC Wage Order, No. 9 section 7(B).

162. Plaintiff is informed and believes and thereon alleges, that Defendants knowingly and intentionally failed to furnish Plaintiff and the members of the putative Class with timely, itemized statements showing (a) total hours worked, (b) gross wages earned, (c) all deductions, (d) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual and/or

1 (e) all applicable piece rates.

2 163. Plaintiff is informed and believes and thereon alleges, that Defendants did not  
3 maintain accurate business records pertaining to the total hours worked for Defendants by  
4 Plaintiff and the members of the putative Class.

5 164. As a result of not having kept accurate records, Plaintiff and the members of the  
6 putative Class suffered injuries in the form of confusion over whether they received all wages  
7 owed to them, and difficulty and expense in reconstructing pay records in addition to other  
8 injuries which may come to light during the discovery process.

9 165. Plaintiff and the members of the putative Class herein seek damages and  
10 penalties pursuant to California Labor Code section 226(e) for Defendants violations of  
11 California Labor Code section 226(a).

12 166. Plaintiff and the members of the putative Class further seek preliminary and  
13 permanent injunctive relief and an award of reasonable attorneys' fees and costs pursuant to  
14 California Labor Code section 226(h).

15 167. Plaintiff and the members of the putative Class also request relief as described  
16 below.

17 **NINTH CAUSE OF ACTION**

18 **FOR WAITING TIME PENALTIES**

19 **(On behalf of the Former Drivers Subclass)**

20 **(Against All Defendants)**

21 168. Plaintiff hereby incorporates by reference each and every one of the allegations  
22 contained in the preceding paragraphs as if the same were fully set forth herein.

23 169. California Labor Code section 203 provides that if an employer willfully fails to  
24 pay compensation promptly upon discharge, as required by California Labor Code section 201  
25 or 202, then the employer is liable for waiting time penalties in the form of continued  
26 compensation of up to thirty (30) work days.

27 170. Plaintiff is informed and believes and thereon alleges, that Defendants, in  
28 violation of California Labor Code section 203, consistently and willfully failed to timely pay

all members of the putative Former Drivers Subclass all wages due and owing to said Subclass members at the time of termination of employment, including basic minimum wages and premium pay due for meal period and rest period wages as set forth hereinabove.

171. Plaintiff and the members of the putative Former Drivers Subclass, seek the penalties to which they and the members of the putative Former Drivers Subclass are entitled pursuant to California Labor Code section 203, in the amount of each Former Drivers Subclass members' daily wage multiplied by thirty (30) days, the exact amount of which is to be determined at trial.

172. Plaintiff and the members of the putative Class also request relief as described below.

#### **TENTH CAUSE OF ACTION**

#### **CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200 *et seq.***

#### **(On Behalf of Plaintiff and the Putative Class)**

#### **(Against All Defendants)**

173. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

174. Defendants, and each of them, committed acts of unfair competition as defined by California Business and Professions Code section 17200, *et. seq.*, by engaging in the following unlawful, unfair and fraudulent business acts and practices in the State of California:

- a. Misrepresenting to Plaintiff and the members of the putative Class the true nature of their employment status;
- b. Intentionally misclassifying Plaintiff and the members of the putative Class as independent contractors;
- c. Intentionally and improperly labeling Plaintiff and the members of the putative Class as independent contractors when, in fact, they were treated employees;
- d. Failing to pay Unemployment Insurance taxes as required by the California Unemployment Insurance Code section 976;
- e. Failing to pay Employment Training Fund taxes as required by the California

Unemployment Insurance Code section 976.6;

f. Failing to withhold State Disability Insurance taxes as required by the California Unemployment Insurance Code section 984;

g. Failing to withhold State income taxes as required by the California Unemployment Insurance Code section 13020;

h. Failing to provide workers' compensation as required by California Labor Code section 3700;

i. Failing to indemnify Plaintiff and the members of the putative Class for employment-related business expenses and losses;

j. Improperly and unlawfully making deductions from Plaintiff's and the members of the putative Class' compensation for work-related expenses and losses not attributable to Plaintiff's and the members of the putative Class' dishonest or willful act or gross negligence, as described above;

k. Failing to pay minimum wage compensation to Plaintiff and the members of the putative Class for all hours worked;

l. Knowingly accepting and retaining a benefit conferred upon Defendants by Plaintiff and the members of the putative Class;

m. Failing and refusing to provide meal periods to Plaintiff and the members of the putative Class;

n. Failing and refusing to provide rest periods to Plaintiff and the members of the putative Class;

o. Failing and refusing to provide accurate itemized wage statements to Plaintiff and the members of the putative Class; and

p. Failing and refusing to maintain payroll records showing the actual hours worked each day by Plaintiff and the members of the putative Class.

175. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts and practices described herein, Defendants have received and continue to hold ill-gotten gains belonging to Plaintiff and the members of the putative Class. As a direct and



proximate result of Defendants' unlawful business practices, Plaintiff and the members of the putative Class have suffered economic injuries including, but not limited to, out-of-pocket unreimbursed business expenses, unlawful deductions from compensation, loss of minimum wage compensation, loss of agreed wages, loss of compensation for missed meal and rest periods, and penalties.

176. Through Defendants' use of such unlawful, unfair, and/or fraudulent acts and practices, Defendants have gained an unfair advantage over Defendants' competitors.

177. Plaintiff and the members of the putative Class seek full restitution on account of the economic injuries they have suffered, along with disgorgement of ill-gotten gains from Defendants as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unlawful, unfair and fraudulent business practices complained of herein.

178. Plaintiff and the members of the putative Class seek appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and unpaid, including interest thereon.

179. Plaintiff and the members of the putative Class also request relief as described below.

### **ELEVENTH CAUSE OF ACTION**

#### **CIVIL PENALTIES PURSUANT TO LABOR CODE §§ 2698, ET SEQ.**

##### **(Against All Defendants)**

180. Plaintiffs incorporate each and every one the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

181. Defendants violated Labor Code Sections 201, 202, 203, 204, 212, 223, 226(a), 226.7, 450, 512, 1194, 1197 and 1198.

182. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

183. Pursuant to Labor Code sections 2699(a) and (f), Plaintiffs may recover civil

penalties on behalf of themselves and other aggrieved current and former employees for Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 226.8, 406, 450, 512, 516, 558, 1174, 1182.12, 1194, 1197, 2753, 2802 in the following amounts:

184. For violations of Labor Code sections 201, 202, 203, 226.7, 1194, 1197 one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by Labor Code Section 2699(f)(2));

185. For violations of Labor Code section 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by Labor Code § 210);

186. For violations of Labor Code Sections 223, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by Labor Code § 225.5);

187. For violations of Labor Code Section 226, if this action is deemed to constitute an initial citation pursuant to Labor Code Section 226.3, two hundred fifty dollars (\$250.00) per each employee for each violation. Alternatively, if an initial citation or its equivalent occurred prior to this action, one thousand dollars (\$1,000.00) per each employee for each subsequent violation (penalty amounts established by Labor Code § 226.3); and

188. For violations of Labor Code Section 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts

established by Labor Code § 558).

189. Plaintiff has complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By letter postmarked June 2, 2016, Plaintiff gave written notice via certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant’s counsel of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. The LWDA did not respond to Plaintiff’s letter.

190. Plaintiff and the other members of the putative class also request relief as described below.

### **PRAYER FOR RELIEF**

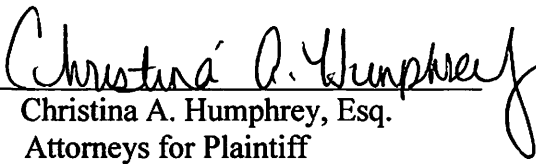
WHEREFORE, Plaintiff prays as follows:

- a. An order certifying the Class herein, appointing the named Plaintiff as the class representatives of all others similarly situated and appointing counsel for the named Plaintiff as counsel for members of the Class;
- b. An order declaring that Defendants misclassified Plaintiff and the members of the putative Class as “independent contractors,” when in fact they were Defendants’ employees;
- c. An order awarding Plaintiff and the members of the putative Class all wages owed, all unreimbursed business expenses, all meal and rest break premiums owed, plus all penalties and compensatory damages;
- d. An order requiring imposition of a constructive trust and/or disgorgement of Defendants’ ill-gotten gains to pay restitution to the Plaintiff and the members of the putative Class and to restore to the Plaintiff and the members of the putative Class all funds acquired by means of any act or practice declared by this Court to be an unlawful, fraudulent or unfair business act or practice, a violation of laws, statutes or regulations, or constituting unfair competition;
- e. Pre-judgment and post-judgment interest;

- 1 f. Reasonable attorneys' fees pursuant to the California Labor Code sections 1194  
2 and 2802 and penalties;  
3 g. Civil penalties;  
4 h. Costs of this suit; and  
5 i. Such other and further relief as the Court may deem necessary or appropriate.  
6

7 DATED: November 10, 2016

**HUMPHREY & RIST, LLP**

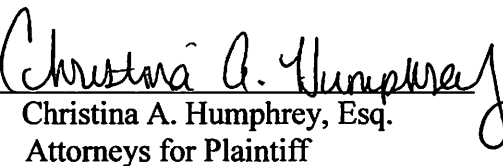
8  
9 By:   
10 Christina A. Humphrey, Esq.  
11 Attorneys for Plaintiff

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands trial of Plaintiff's and the members of the putative Class'  
14 claims by jury to the extent authorized by law.  
15

16 DATED: November 10, 2016

**HUMPRHEY & RIST, LLP**

17  
18 By:   
19 Christina A. Humphrey, Esq.  
20 Attorneys for Plaintiff  
21  
22  
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28

# Exhibit 2

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FINAL APPROVAL  
HEARING**

*A court authorized this notice. This is not a solicitation.*

*This is not a lawsuit against you and you are not being sued.*

*However, your legal rights are affected by whether you act or don't act.*

**TO: All current or former California-based truck drivers contracted with Dependable Highway Express, Inc. ("Defendant" or "DHE") as independent contractor truck drivers ("Drivers") at any time from August 1, 2011, through [Date of Mailing Notice] ("Class Members").**

Based on information in DHE's records, you may be a Class Member whose legal rights will be affected by this Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT.

PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

**WHAT INFORMATION IS IN THIS NOTICE**

1. Why Have I Received This Notice?.....	Page 2
2. What Is This Case About? .....	Page 2
3. Am I a Class Member? .....	Page 3
4. How Does This Class Action Settlement Work?.....	Page 3
5. Who Are the Attorneys Representing the Parties? .....	Page 3
6. What Are My Options?.....	Page 4
7. How Do I Opt Out or Exclude Myself From This Settlement?.....	Page 4
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10. How Much Can I Expect to Receive From This Settlement?.....	Page 6
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### **1. Why Have I Received This Notice?**

DHE's records indicate that you may be a Class Member. The settlement will resolve all Class Members' claims described below during the Class Period, which covers August 10, 2011 through [Date of Mailing Notice].

A Preliminary Approval Hearing was held on December 7, 2016, in the Sacramento Superior Court, California. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

This Notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement ("Stipulation of Settlement and Release" or "Settlement Agreement") available at the website related to this case, located at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) (the "Website"), by contacting class counsel for Plaintiffs, whose contact information is located below at paragraph 5, by accessing the Court docket in this case through the Court's website <https://www.saccourt.ca.gov>, or by visiting the office of the Clerk of the Court for Sacramento Superior Court, located at 720 9<sup>th</sup> Street, Sacramento, CA 95814. Any terms used in this Notice will have the same meaning as set forth in the Stipulation of Settlement and Release.

The Court will hold a Final Approval Hearing to determine whether the proposed Settlement is fair, reasonable and adequate on \_\_\_\_\_, 2017, at \_\_\_\_\_ a.m., in Department 35 of Sacramento Superior Court, located at 720 9<sup>th</sup> Street, Sacramento, CA 95814. If you wish to be heard at the Final Fairness Hearing, you must submit a timely and valid objection to the settlement as set forth in Section 8 below.

This date may change without further notice to the Class. You are advised to confirm the hearing date remains as scheduled, by checking the Website, located at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or the Court's website at <https://www.saccourt.ca.gov>, by clicking on "online services" then "Public Case Access Site," then "Civil" (located at the top), and then case number 2015-00182832.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

### **2. What Is This Case About?**

This case involves claims against DHE for alleged violations of wage and hour laws brought by Named Plaintiff Davit Pitshikyan, on behalf of himself and all other Class Members. On August 10, 2015, Plaintiff Davit Pitshikyan filed a lawsuit against DHE in the Superior Court for the State of California, County of Sacramento, Case Number 34-2015-00182832 and on \_\_\_\_\_, 2016, Plaintiff filed an Amended Complaint ("Action"). Named Plaintiff alleged that DHE misclassified its independent owner-operators as independent contractors and should have classified them as employees, entitled to the protections of California's Labor Code. Named Plaintiff also alleged that DHE failed to pay minimum wages, designated rates, and overtime; failed to reimburse work-related expenses/made illegal deductions; failed to provide meal and rest breaks; failed to provide accurate itemized wage statements, failed to pay wages timely upon termination, was unjustly enriched because it did not pay for all hours worked, violated California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*) and violated the Private Attorney's General Act ("PAGA") (Cal. Lab. Code § 2698 *et seq.*).

DHE denies all allegations made by Named Plaintiff, individually and on behalf of Class Members, in the Action and denies liability for any wrongdoing with respect to the alleged facts or causes of action asserted in the Action.

### **3. Am I A Class Member?**

You are a Class Member if you are a current or former California-based truck driver who contracted with DHE as an independent contractor truck driver at any time from August 10, 2011 through [Date of Mailing of

Notice], (“Class Period”). There are an estimated **391** Class Members. “California-based” refers to Drivers (i) who had a residential address in California at any time during the Class Period; and/or (ii) who were assigned or associated with any warehouses and/or service centers in California at any time during the Class Period.

#### **4. How Does This Class Action Settlement Work?**

In this Action, Named Plaintiff sued on behalf of himself and all other drivers who were contracted as independent owner-operators with DHE. Named Plaintiff and these others similarly situated comprise a “Class” and are “Class Members.” As discussed in Section 9 below, the settlement of this Action resolves the claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

**The Court did not decide in favor of Plaintiffs or DHE. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong.** By agreeing to resolve the Action, all parties avoid the risks and cost of a trial. The Settlement is the result of good faith negotiations between Plaintiff and DHE, through their respective attorneys, and with the assistance of an experienced mediator. Plaintiff and the attorneys believe the settlement is fair and reasonable.

DHE expressly denies the allegations of wrongdoing and violations of law alleged by Plaintiff and the Class and further denies any liability whatsoever to Plaintiff or to the Class. DHE is settling the lawsuit as a compromise of these claims.

The Court file has the settlement documents which explain the settlement in greater detail. The Court must review the terms of the settlement and determine if it is fair and reasonable to the Class Members.

#### **5. Who Are the Attorneys Representing the Parties?**

##### Attorneys for Plaintiff or Drivers:

###### **HUMPHREY & RIST, LLP**

Christina A. Humphrey, Esq.  
Thomas Rist, Esq.  
351 Paseo Nuevo, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Telephone: (805) 618-2924  
Facsimile: (805) 618-2939  
christina@humphreyrist.com  
tom@humphreyrist.com

###### **TOWER LEGAL GROUP, PC**

James A. Clark, Esq. (SBN 278372)  
1510 J Street, Suite 125  
Sacramento, California 95814  
Telephone: (916) 361-6009  
Facsimile: (916) 361-6019  
james.clark@towerlegalgroup.com

##### Attorneys for Defendant or DHE:

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

Angela S. Cash  
Paul D. Root  
10 W. Market St. Suite 1500  
Indianapolis, IN 46204  
Telephone: (317) 637-1777  
Facsimile: (317) 687-2414  
acash@scopelitis.com  
proot@scopelitis.com

###### **SCOPELITIS GARVIN LIGHT HANSON & FEARY, LLP**

**Christopher C. McNatt, Jr.**  
**2 North Lake Avenue, Suite 460**  
**Pasadena, CA 91101**  
**Telephone: (626) 795-4700**  
**Facsimile: (626) 795-4790**  
**cmcnatt@scopelitis.com**



The Court has decided that Humphrey & Rist, LLP, and Tower Legal Group are qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Plaintiffs' Counsel are working on your behalf. But, if you want your own attorney, you may hire one at your own expense.

## **6. What Are My Options?**

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

***Important Note: DHE will not retaliate against you in any way for either participating or not participating in this Settlement.***

- **DO NOTHING:** To receive a Settlement Award check, you do not have to do anything. If you do not expressly request to be excluded, i.e. "Opt Out," from the settlement, you will be a Settlement Class Member and will receive your share of the settlement monies. The amount you receive ("Settlement Award") will be based upon your total workweeks for the Class Period in relation to the total workweeks of all Settlement Class Members during the Class Period. By not requesting to exclude yourself from the settlement, in addition to being able to receive your share of the settlement monies, you will release the Released Claims against the Released Parties as set forth in Section 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may "Opt Out," which will remove you from the Class and this Action. If the Court grants final approval of the Settlement, you will not receive a Settlement Award and you will not give up the right to sue Defendant for the Released Claims.
- **OBJECT:** If you are a Settlement Class Member (meaning you did not Opt Out of the Settlement), you can ask the Court to deny approval by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object. If you would like to object, you must not opt out of this case.

The procedures for opting out and objecting are set forth below in the sections entitled "How Do I Opt Out or Exclude Myself From This Settlement?" and "How Do I Object To The Settlement?"

## **7. How Do I Opt Out or Exclude Myself From This Settlement?**

If you do not want to take part in the settlement, you must sign and mail a written Request for Exclusion to the Settlement Administrator. The written request must: (a) state the name of the Action, (b) state your name (and former names, if any), address, telephone number, and the last four (4) digits of your Social Security Number; (c) state that "I wish to be excluded from the Settlement of this case, Davit Pitshikyan v. Dependable Highway Express, Inc., et. al., Case No. 34-2015-00182832. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement and I may bring a separate action. I understand that in any separate action, I may receive nothing or may receive less than I would have received if I had not asked to be excluded from the Settlement. I understand that I should consult with an attorney, at my own expense, regarding

the applicable statute of limitations.”; (d) be addressed to the Settlement Administrator at [\*\*Address for Settlement Administrator \*\*]; (e) be signed by you; and (f) be postmarked no later than \_\_\_\_\_ [30 days after notice packet mailed out].

If you submit a valid and timely request to opt out of the Settlement in compliance with the procedure above, you will no longer be a member of the Class, and you will not receive a Settlement Award. By opting out of the Class, you will retain whatever rights or claims you may have against DHE for the Released Claims as defined in Section No. 9 below and any monies to which you would have been entitled under the Settlement will be distributed to the rest of the participating Class Members proportionately.

**The Final Judgment entered following final approval of the Settlement by the Court will bind all Class Members who do not request exclusion from the class action settlement.**

#### **8.     *How Do I Object To The Settlement?***

If you are a Settlement Class Member (meaning you did not opt out of the Settlement), you may object to the Settlement in writing. If you object to the Settlement according to the procedure below, you may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number, (b) be submitted to the Court either by mailing them to the Clerk of the Court for Sacramento Superior Court located at 720 9th Street, Sacramento CA 95814, or by filing them in person at that location, and (c) be filed or postmarked on or before \_\_\_\_\_. [30 days after notice packet mailed out].

In addition, your objection should (a) state your full name, address, and telephone number; (b) include the words “Notice of Objection” or “Formal Objection”; (c) describe the legal and factual arguments supporting the objection; (d) list identifying witness(es) you may call to testify at the fairness hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the hearing. It should also be signed by you and clearly state the basis for your objection.

Again, to be valid and effective, any objections must be filed with the Court, either by mail or in person, and postmarked on or before \_\_\_\_\_. [30 days after notice packet mailed out]. Late objections will not be considered.

If the Court rejects the objection, you will automatically receive a Settlement Award and will be bound by the terms of the Settlement.

#### **9.     *How Does This Settlement Affect My Rights? What are the Released Claims?***

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not request to be excluded from the Settlement will be bound by the Court’s Final Judgment and will release DHE and its past and present parent corporations, subsidiaries, divisions, and affiliates, related companies, successors and assigns and each of their respective past, present and future officers, directors, employees, partners, shareholders, representatives, attorneys, and agents (the “Released Parties”) from the Released Claims. These Released Claims are as follows:

##### **A.     Released Claims.**

All claims asserted in the Complaints, including but not limited to DHE’s alleged failure to pay the California minimum wage for all hours worked; DHE’s alleged failure to pay overtime; DHE’s alleged failure to reimburse Settlement Class Members for business expenses in violation of Cal. Labor Code §2802; DHE’s allegedly

unlawful deductions from compensation in violation of Cal. Labor Code §§ 221, 223 and 400-410 and IWC Wage Order number 9, § 8; DHE's alleged requirement to provide a cash bond in violation of § 406 or to purchase items from DHE in violation of § 450; DHE's alleged failure to provide meal periods and/or rest periods; DHE's alleged failure to timely furnish accurate wage statements; DHE's alleged failure to pay all wages owed upon termination; DHE's alleged unlawful, unfair, and deceptive business practices in violation of the Cal. Business & Professions Code § 17200, et seq. ("Section 17200"), and any penalties, liquidated damages, interest, attorneys' fees, or litigation costs allegedly due and owing by virtue of any of the foregoing; as well as any and all wage and hour claims, whether known or unknown, at law or in equity, which Settlement Class Members may now have or may have as of the execution of the Stipulation of Settlement and Release under Section 17200, the California Labor Code, the wage orders of the California Industrial Welfare Commission, or other federal, state, or local law based upon the factual allegations in the Complaint including, Plaintiff's allegation that DHE has misclassified Plaintiff and the Settlement Class Members as independent contractors. Released Claims also includes, but is not limited to, claims for failing to promptly pay all wages due and owing at the time of termination or discharge in violation of Cal. Labor Code § 203; engaging in unlawful/unfair/fraudulent business practices in violation of Section 17200; failing to provide accurate itemized wage statements in violation of Cal. Labor Code § 226; and any and all penalties pursuant to the Private Attorney General Act of 2004 ("PAGA") based on the factual allegations of the Complaint including Plaintiff's allegation that DHE has misclassified Plaintiff and the Settlement Class Members as independent contractors.

#### **10. *How Much Can I Expect to Receive From This Settlement?***

DHE will pay, subject to Court approval, a Gross Settlement Amount of \$2,500,000.00 to cover: (1) the Settlement Award to all Settlement Class Members; (2) the Service Award to Named Plaintiff Davit Pitshikyan in an amount up to \$15,000.00 for prosecution of the Action, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (3) the Settlement Administration Costs to the Settlement Administrator, ILYM Group, in an amount up to \$15,000.00; (4) Attorneys' Fees in an amount up to \$825,000 for Plaintiff's attorneys' fees; (5) Litigation costs and expenses in an amount up to \$25,000.00 to Plaintiff's counsel; (6) an allocation to the Labor Workforce and Development Agency ("LWDA") of \$20,000 for resolution of Plaintiff's claim for penalties under PAGA, \$15,000 of which will be paid to the LWDA.

After deducting items 2-6 above, the remaining sum, estimated at \$1,605,000.00, ("Net Settlement Fund"), shall be distributed to all Settlement Class Members. The Settlement Administrator will pay a portion of the Net Settlement Fund to each Settlement Class Member based on his or her total workweeks as a Driver for DHE during the Class Period in relation to the total workweeks of all Settlement Class Members during the Class Period. The Settlement Award will be allocated as reimbursement of business expenses and/or penalties, the Settlement Administrator will issue you an IRS Form 1099 for the Settlement Award and you will be fully responsible for paying any federal, state or local income taxes due on the Settlement Award. The number of weeks you worked as a Driver during the Class Period and the estimated aggregate amount you may expect to receive are shown in the enclosed Class Member Information Sheet.

It is strongly recommended that, upon receipt of your Settlement Award check, you immediately cash it or cash it before the 180-day void date shown on each check. All uncashed checks will be remitted to the Department of Industrial Relations where you can claim your money if the check remains uncashed.

If you believe the number of weeks you worked as a Driver during the Class Period is wrong, you must submit an explanation in writing describing why you believe the information is wrong, along with any supporting information and/or documentation. Your challenge, together with any supporting documentation, must be signed by you and delivered to the Settlement Administrator postmarked on or before [30 days after notice packet mailed out]. Late information will not be considered.

**11. *How Will the Attorneys for the Settlement Class and the Named Plaintiff Be Paid?***

The attorneys for the Named Plaintiff and the Settlement Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Class shall be paid an amount not to exceed \$825,000.00 in attorney fees and litigation costs and expenses not to exceed \$25,000.00.

The Named Plaintiff, Davit Pitshikyan, will also be paid, subject to Court approval, an amount not to exceed \$15,000.00, as a Service Award for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a general release of all claims. The Service Award is in addition to any Settlement Award he will receive.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact any of the attorneys listed above, or the Settlement Administrator at the telephone number below, toll free. Please refer to the Pitshikyan v. DHE Class Action Settlement. For more information, you can visit the Website, located at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). This Website contains links to important documents in this case, including this Notice, the Settlement Agreement, and any motions for Preliminary Approval and attorneys' fees filed in this Action.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you may refer to the documents posted on the Website or the underlying documents and papers on file with the Court at Sacramento Superior Court, located at 720 9<sup>th</sup> Street, Sacramento, CA 95814.

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT.**

4841-2418-1307, v. 1

# Exhibit 3

**IF YOU WANT TO RECEIVE A SHARE OF THE SETTLEMENT OF THE *PITSHIKYAN V. DEPENDABLE HIGHWAY EXPRESS, INC.* CLASS ACTION, REVIEW THE INFORMATION BELOW TO CONFIRM YOUR CONTACT INFORMATION IS CORRECT.**

**IF THIS INFORMATION IS ACCURATE, DO NOT RETURN THIS SHEET: YOU AUTOMATICALLY WILL RECEIVE YOUR SETTLEMENT AWARD UNLESS YOU SUBMIT AN ELECTION NOT TO PARTICIPATE.**

**IF THE INFORMATION BELOW *IS NOT CORRECT*, PROVIDE CORRECTED INFORMATION, DATE AND SIGN THIS FORM (AT THE BOTTOM OF THE PAGE), AND MAIL IT, POSTMARKED NO LATER THAN **X, 2017** [30 days after notice packet mailed out], TO:**

*Pitshikyan v. Dependable Highway Express, Inc.*, Settlement Administrator  
c/o ILYM Group, Inc.  
[address to be inserted]

**INFORMATION FOR SETTLEMENT CLASS MEMBER RECEIVING THIS NOTICE**

1. Your name: <<FullName>>
2. Your mailing address: <<Address1>> <<Address2>>  
<<City>>, <<State>> <<Zip>>
3. Total Workweeks between August 10, 2011 and [Date of Mailing of Notice]: <<TotalWorkweeks>>
4. Your estimated settlement award: <<EstAmount>>

**If any of the information shown above is not correct, please so indicate below:**

Corrected Information	
1. Your corrected name:	
2: Your corrected mailing address:	
3: Last four digits of your Social Security number (you are not required to provide your entire Social Security Number)	
4. Corrected total workweeks	

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: \_\_\_\_\_, 2016

Signature: \_\_\_\_\_

IT IS YOUR OBLIGATION TO INFORM THE SETTLEMENT ADMINISTRATOR OF ANY CHANGE TO YOUR MAILING ADDRESS PRIOR TO YOUR RECEIPT OF YOUR SETTLEMENT SHARE. FAILURE TO UPDATE YOUR MAILING ADDRESS MAY PREVENT YOUR RECEIPT OF YOUR SETTLEMENT SHARE.  
4833-5849-6828, v. 1