

1 **ACKERMANN & TILAJEF, P.C.**
Craig J. Ackermann (Bar No. 229832)
2 cja@ackermanntilajef.com
Sam Vahedi (Bar No. 282660)
3 sv@ackermanntilajef.com
1180 South Beverly Drive, Suite 610
4 Los Angeles, CA 90035
Tel: 310.277.0614
5 Fax: 310.277.0635

6 **HAMMONDLAW, P.C.**
Julian Hammond (Bar No. 268489)
7 jhammond@hammondlawpc.com
1829 Reisterstown Road, Suite 410
8 Baltimore, MD 21208
Tel: 310.601.6766
9 Fax: 310.295.2385

10 Attorneys for Plaintiff ROBERT MARTINEZ

11
12 Richard H. Rahm (Bar No. 130728)
richard.rahm@us.dlapiper.com
13 **DLA PIPER LLP (US)**
555 Mission Street, Suite 2400
14 San Francisco, CA 94105
Tel: 415.836.2500
15 Fax: 415.836.2501

16 Attorneys for Defendant KNIGHT TRANSPORTATION, INC.

17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

20 ROBERT MARTINEZ, individually and on
21 behalf of all others similarly situated,

22 Plaintiff,

23 v.

24 KNIGHT TRANSPORTATION, INC. d/b/a
ARIZONA KNIGHT TRANSPORTATION,
25 INC., an Arizona corporation,

26 Defendant.

NO. 1:16-CV-01730-SKO

**STIPULATION OF CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

27

28

1 who were employed by Defendant from one year prior to the filing of the Complaint (“Wage
2 Statement Subclass”) in violation of Labor Code § 226(a) and 226.2; (6) unfair, unlawful, and
3 fraudulent business practices, in violation of Business and Professions Code §§ 17200 *et seq.*, and
4 (7) PAGA Penalties pursuant to Labor Code § 2698, *et seq.*

5 3. On November 10, 2016, Knight filed an answer that generally denied the
6 claims as without merit and asserted various affirmative defenses. Plaintiff claims the causes of
7 action in the Complaint have merit. Knight denies Plaintiff’s causes of action have merit, denies any
8 liability or wrongdoing, and denies Plaintiff is entitled to relief under any of the statutes cited in
9 those causes of action. Knight maintains it has complied with applicable law in all aspects.

10 4. On November 14, 2016, Knight removed the action to the Eastern District of
11 California, Fresno Division, based on diversity of citizenship jurisdiction, where it was assigned to
12 Judge Drozd.

13 5. On April 22, 2015, defendant Knight filed an answer that generally denied
14 the claims as without merit and asserted various affirmative defenses. Plaintiff claims the causes of
15 action in the Complaint have merit. Knight denies Plaintiff’s causes of action have merit, denies any
16 liability or wrongdoing, and denies Plaintiff is entitled to relief under any of the statutes cited in
17 those causes of action. Knight maintains it has complied with applicable law in all aspects.

18 6. Following removal, Plaintiff filed a motion for class certification. On
19 December 3, 2018, Plaintiff narrowed the scope of the Class to a class of non-resident drivers
20 for days entirely worked within California. Plaintiff agreed not to pursue wage statement
21 penalties under Labor Code § 226 in litigation, although he agreed pursue PAGA penalties based
22 upon Knight’s alleged wage statement violations, among other Labor Code violations. The Court
23 then certified a “Class” of “all current and former truck drivers employed by defendant Knight
24 Transportation, Inc., who advised defendant that they resided in Oregon, Nevada, Arizona, Utah,
25 and/or Colorado, who were paid in whole or in part on a piece-rate basis, and who drove one or
26 more routes of five hours or more entirely within the State of California for defendant during
27 the “Class Period” going back to September 30, 2012” as to Plaintiff’s first, second, third, and
28 sixth causes of action only.

1 7. Throughout, the Parties have thoroughly investigated the facts of the
2 Complaint and have diligently pursued an investigation and litigation of Plaintiff's and Class
3 Members' and PAGA Claim Members' (as defined below) claims against Knight. The Parties
4 exchanged discovery and disclosed, both through discovery and through informal mediation-related
5 disclosures, company and operational policies, documents, and data. On January 30, 2018,
6 Plaintiff also took the deposition of Knight's Rule 30(B)(6) designee, Kevin Quast.

7 8. The Parties recognize the issues in the Action are likely only to be resolved
8 with further extensive and costly proceedings; recognize that further litigation will cause
9 inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits
10 of litigation; and recognize the risk and uncertainty of the outcome inherent in any litigation. Based
11 on their own independent investigation and evaluation, Ackermann & Tilajef, P.C. (hereinafter
12 "Class Counsel") is of the opinion that the Settlement with Knight for the consideration and on the
13 terms in this Settlement is fair, reasonable, and adequate and is in the best interest of the Class in
14 light of all known facts and circumstances, including the risk of significant delay, defenses asserted
15 by Knight. While Knight specifically denies all liability in the Action, it has agreed to enter into this
16 Settlement to avoid the cost and business disruption associated with further defending the Action.

17 9. The Parties participated in a mediation of this case on June 10, 2021 with
18 Mark Rudy. Although the matter did not settle at that time, the Parties continued informal
19 discussions and negotiations, and the Parties ultimately agreed to a settlement. The Parties further
20 agreed to enter into this Agreement to memorialize their settlement of the Action.

21 10. The Parties have agreed to fully, finally, and forever compromise and settle
22 all claims asserted in the Action pursuant to paragraphs 51-57 of this Agreement. To achieve a
23 complete release of Knight, each Class Member acknowledges this Settlement is intended to
24 include in its effect all claims raised in the Action as amended pursuant to this Agreement or that
25 could have been raised based on the facts alleged in the Action, including all causes of action
26 and claims alleged in the Action whether asserted under California Labor Code, the California's
27 Unfair Competition Law ("UCL"), the PAGA, the California Industrial Welfare Commission
28 Wage Orders, and all civil and statutory penalties arising from the foregoing, including, but not

1 limited to those under the California Labor Code.

2 **IDENTIFICATION AND DEFINITION OF THE CLASS,**
3 **AND CORRESPONDING AMENDMENT OF COMPLAINT**

4 11. Class: The class for purposes of this Settlement shall be as follows:
5 all current and former truck drivers employed by defendant Knight
6 Transportation, Inc., who advised defendant that they resided in Oregon,
7 Nevada, Arizona, Utah, and/or Colorado, who were paid in whole or in
8 part on a piece-rate basis, and who drove one or more routes of five hours
9 or more entirely within the State of California for defendant during the
10 “Class Period” from September 30, 2012 through Preliminary Approval.

11 The persons identified in this paragraph are “Class Members” and are collectively referred to as “the
12 Class.”

13 12. Class Period: The Class Period for the Class is from September 30, 2012
14 through Preliminary Approval (“Class Period”).

15 Settlement Class/Settlement Class Members: The “Settlement Class” for this Action
16 includes all Class Members who do not request exclusion from the Settlement as provided in this
17 Agreement within the Notice Period (as defined in paragraph 37).

18 Participating Class/Participating Class Member(s): The “Participating Class” shall
19 mean the Plaintiff and the Settlement Class Members who have validly submitted Claim Forms
20 (defined in paragraph 40 below) within the Class Period or who do not opt out of this Settlement.
21 All Participating Class Members will receive an allocated Individual Settlement Payment (see
22 paragraph 19) to be calculated as set forth herein.

23 13. PAGA Claims Period: The PAGA Claims Period means the period of time
24 beginning on September 27, 2015 to preliminary approval (“PAGA Claims Period”).

25 14. PAGA Claim Member(s): PAGA Claim Members shall mean any and all
26 Class Members, who worked for Defendant at any time from September 27, 2015 up to preliminary
27 approval of this Agreement.

1 **TERMS OF THE CLASS SETTLEMENT**

2 15. All claims, damages, or causes of action alleged or that could have been
3 alleged based on the facts in the Complaint will be settled and compromised under the terms and
4 conditions in this Settlement, as approved by this Court.

5 16. This Settlement is partially reversionary. Only Participating Class Members
6 will receive Settlement Payments (see paragraph 19) and only PAGA Claims Members will be
7 allocated and forwarded Individual PAGA Claim Payments (see paragraph 21), and those amounts
8 not claimed, subject to the floor on distribution of at least 50% of the Net Settlement Amount
9 (“NSA”), defined below, will remain the property of Knight and not be part of this settlement.
10 Except for the Individual PAGA Claim Payments, the settlement will be on a claims-made basis,
11 meaning Class Members shall be required to complete and submit to the Settlement Administrator
12 a Claim Form postmarked no later than the last day of the Notice Period (as defined in paragraph
13 36), unless otherwise ordered by the Court, to become a Participating Class Member entitled to
14 receive payment from the Net Settlement Amount (defined in paragraph 19 below).

15 17. The “Gross Settlement Amount” (“NSA”) will mean Four Hundred
16 Thousand Dollars and Zero Cents (\$400,000.00), to be paid by Knight under this Agreement and
17 available to pay all amounts provided for under this Agreement and approved by the Court,
18 including: (1) Class Counsel’s fees (up to 25% of the Gross Settlement Amount or \$100,000); (2)
19 Class Counsel’s reasonable costs; (2) a Service award to Plaintiff not to exceed Ten Thousand
20 Dollars and No Cents (\$10,000.00); (3) all fees and costs of administering the Settlement; (4)
21 payment to the California Labor Workforce Development Agency (“LWDA”) and PAGA Claim
22 Members in the amount of Fifteen Thousand Dollars and No Cents (\$15,000.00) (representing an
23 allocation of \$20,000.00 to the PAGA claims), or any other amount within the Gross Settlement
24 Amount awarded by the Court; and (5) all Individual Settlement Payments.

25 18. The “Net Settlement Amount” will be calculated by deducting from the Gross
26 Settlement Amount of \$400,000.00 the following sums: (1) Class Counsel’s fees up to \$100,000 ,
27 which is 25% of the Gross Settlement Amount, (2) reasonable litigation costs, subject to Court
28 approval, up to \$20,000; (3) an Service award to Plaintiff of \$10,000.00, subject to Court approval;

1 (4) a payment to the LWDA and PAGA Claim Members in association with the release of claims
2 under California Labor Code, section 2698, *et seq.*, in the amount of \$20,000.00 (with \$15,000.00
3 transmitted to the LWDA); and (5) settlement administration costs. Employer side payroll taxes
4 shall be paid from any unclaimed funds above the 50% floor on distribution of the NSA. The
5 meaning of the 50% floor is as follows: Regardless of the specific amount or percentage of the NSA
6 that is actually claimed, at least 50% of the NSA shall be distributed to Class members who submit
7 timely claims. If more than 50% of the NSA is claimed, then the actual amount claimed shall be
8 distributed to the timely claimants, and only the amount of the NSA that remains unclaimed shall
9 revert to Defendant. Employer-side payroll taxes on the portions of the Settlement Payments
10 allocated to wages will be funded and paid from unclaimed funds, if any.

11 19. Settlement Payments: The Settlement Administrator will calculate each
12 Participating Class Member's settlement amount available to be claimed ("Individual Settlement
13 Payment") out of the Net Settlement Amount, based upon the number of calendar weeks (Sunday
14 to Saturday) as follows:

15 (a) NSA shall be divided by the "Total Calendar Weeks," i.e., the total
16 number of calendar weeks worked by all Settlement Class
17 Members during the Class Period, and the resulting number will be
18 the "Calendar Week Value."

19 (b) Each Participating Class Member's payment under this settlement
20 will be calculated as follows: his or her number of calendar weeks
21 worked during the Class Period multiplied by the Calendar Week
22 Value. For Class Members who are also PAGA Claim Members, they
23 shall also receive their "Individual PAGA Claim Payments," as set
24 forth below. The resulting sum of the two component payments for
25 Class Members who are also PAGA Claim Members will equal each
26 Participating Class Member's "Individual Settlement Payment." For
27 Class Members who are not PAGA Claim Members, their Individual
28 Settlement Payment will consist solely of the amount that is the

1 product of their calendar weeks worked within the Class Period times
2 the Calendar Week Value. PAGA Claim Members who opt-out of
3 the class settlement shall still receive their Individual PAGA payment,
4 since there is no right to opt-out of a PAGA settlement.

5 20. The Settlement Administrator will apply the formula set forth herein to
6 determine the Individual Settlement Payment of each Participating Class Member and PAGA Claim
7 Member, subject to Knight providing the Settlement Administrator with the necessary data. The
8 Parties acknowledge and agree the formula used to calculate the number of calendar weeks and
9 Individual Settlement Payments does not imply that all of the elements of damages alleged in the
10 Action are not being taken into account. The above formula was devised as a practical and logistical
11 tool to enable a fair and equitable distribution process. The Parties agree that in no event shall Knight
12 be obligated to pay more than the Gross Settlement Amount in full settlement of the Action, with
13 the sole possible exception of the employer portion of payroll taxes in the unlikely event that there
14 are not sufficient unclaimed funds to cover those employer-side payroll taxes.

15 21. Withdrawal Option. If fifteen percent (15%) or more of the Class Members
16 timely opt out of the settlement, Knight shall have the sole and absolute discretion to withdraw from
17 this Agreement. Knight shall provide written notice of such withdrawal to Class Counsel. In the
18 event that Knight elects to so withdraw, the withdrawal shall have the same effect as a termination
19 of this Agreement for failure to satisfy a condition of settlement, and the Agreement shall become
20 null and void and have no further force or effect.

21 **TERMS OF THE PAGA CLAIM SETTLEMENT**

22 22. PAGA Claim Members (whether or not they are Settlement Class Members
23 or Participating Class Members) shall be allocated a pro rata portion of the 25% of the \$20,000.00
24 PAGA allocation, which will be divided evenly between the PAGA Claim Members and added to
25 the amount they will receive as Participating Class Member or will be sent separately for Settlement
26 Class Members who have not filed a Claim Form or Class Members that have opted out of the
27 Settlement. The individual payments to PAGA Claim Members shall be referred to as “Individual
28 PAGA Claim Payments.”

TAXES AND FULL COMPENSATION

1
2 23. Settlement Payments from the Net Settlement Amount will be designated and
3 allocated as follows: (i) 15% for damages or alleged wages, (ii) 45% for penalties, and (iii) 40% for
4 interest. All settlement payments shall be paid in a net amount after applicable employee state and
5 federal tax withholdings. The Individual PAGA Claim Payments to PAGA Claim Members will be
6 designated as payments for alleged penalties.

7 24. Settlement Class Members are responsible to pay appropriate taxes due on
8 the Individual Settlement Payments and Individual PAGA Claim Payment they receive. IRS Forms
9 W2 and 1099 will be issued to each Participating Class Member reflecting the payments for alleged
10 wages and damages, penalties and interest, respectively. Those who are receiving Individual PAGA
11 Claim Payments only shall receive an IRS Form 1099 for such payment. All Individual Settlement
12 Payments will be deemed paid to such Participating Class Members solely in the year in which such
13 payments are issued to the Participating Class Members. Counsel does not purport this
14 communication to constitute tax or legal advice. If this Settlement, or any of its attachments, is
15 interpreted to contain or constitute advice regarding any U.S. Federal tax issue, such advice is not
16 intended or written to be used, and cannot be used, by any person to avoid penalties under the
17 Internal Revenue Code.

18 25. Knight makes no representation on the tax treatment or legal effect of the
19 payments, and Plaintiff and Participating Class Members, Settlement Class Members and PAGA
20 Claim Members are not relying on any statement, representation or calculation by Knight or by the
21 Settlement Administrator. Plaintiff, Participating Class Members and PAGA Claim Members
22 understand and agree they will be solely responsible for the payment of any taxes and penalties
23 assessed on their respective payments and will defend, indemnify, and hold Knight free and
24 harmless against any claims resulting from treatment of such payments.

25 26. The Individual Settlement Payments from the Gross Settlement Amount and
26 Individual PAGA Claim Payments to PAGA Claim Members are the sole payments to be made by
27 Knight to or on behalf of the Settlement Class and PAGA Claim Members as the result of this
28 litigation. The Settlement Class and PAGA Claim Members will not be entitled to any additional

1 compensation or benefits as a result of having received amounts under this Settlement. For example,
2 receipt of Individual Settlement Payments and Individual PAGA Claim Payments will not entitle
3 any Settlement Class Member and any PAGA Claim Member to additional compensation or benefits
4 under any company bonus, contest or other compensation or benefit plan or agreement in place
5 during the Settlement Class Period covered by the Settlement. Payments under the Settlement will
6 not entitle a Settlement Class Member and PAGA Claim Members to any retirement, 401(k) benefits
7 or matching benefits, or other compensation benefits. This provision will apply notwithstanding any
8 contrary language or agreement in any benefit or compensation plan document that might have been
9 in effect during the period covered by this Settlement.

10 27. Attorneys' Fees and Costs: In consideration for having litigated this matter,
11 and ultimately settling this matter, and in exchange for the release of all claims by the Settlement
12 Class and PAGA Claim Members, and subject to final approval and/or modification by the Court,
13 Knight will not object to Class Counsel's request from the Gross Settlement Amount of attorneys'
14 fees not to exceed \$100,000 (25% of the Gross Settlement Amount), and their reasonable costs up
15 to \$20,000 in addition to the attorneys' fees. Class Counsel will apply for fees and costs at the same
16 time it submits to the Court a proposed final order and judgment of dismissal as discussed in
17 paragraph 45 below. The attorneys' fees are to compensate Class Counsel for all the work already
18 performed in the Action, and all the work remaining to be performed in documenting the Settlement,
19 securing Court approval of the Settlement, making sure the Settlement is fairly administered and
20 implemented, obtaining dismissal of the Action with prejudice and representing the Class regarding
21 any objections and/or appeals from this Settlement, including any interest. Class Counsel will be
22 issued an IRS Form 1099 for any fees and costs awarded by the Court. Class Counsel agrees that
23 any allocation of fees between or among each of the Class Counsel or among the Class Counsel and
24 any other attorney that may be representing Plaintiff, the Class and PAGA Claim Members, or any
25 of them, shall be the sole responsibility of Class Counsel.

26 28. The attorneys' fees and costs approved by the Court will be paid to Class
27 Counsel within forty five (45) calendar days following the Effective Date of this Settlement as set
28 forth in paragraph 30. Any reduction in the amounts of fees or costs awarded by the Court will be

1 Court has entered a final order and judgment certifying the Class for settlement purposes,
2 dismissing this class action case with prejudice, and approving this Settlement; and (v) the later
3 of these events: thirty (30) days have elapsed following entry of the Court’s final order
4 approving the Settlement; or if any appeal opposing this Settlement has been filed then when
5 any appeal opposing this Settlement has been dismissed finally and conclusively with no right
6 to pursue further remedies or relief, or any appeal has been resolved and upheld the Court’s final
7 order approving the Settlement with no right to pursue further remedies or relief plus ten (10)
8 days. It is the intention of the Parties that the Settlement will not become effective until the
9 Court’s order approving the Settlement has become final, and there is no further recourse by any
10 appellant or objector who seeks to contest the Settlement. Knight will post the Settlement Funds
11 with the Settlement Administrator within thirty (30) days after the Effective Date.

12 32. Preliminary Approval: Upon execution of this Settlement, Plaintiff will file a
13 Motion for Preliminary Approval and will apply to the Court for the entry of an order or orders
14 substantially in the following form:

- 15 (a) Approving the filing of Complaint;
- 16 (b) Preliminarily approving the settlement as fair, reasonable and
17 adequate;
- 18 (c) Scheduling a final approval hearing on whether the proposed
19 Settlement, including payment of attorneys’ fees and costs, and
20 Plaintiff’s service payment, should be finally approved as fair,
21 reasonable and adequate as to the members of the Settlement
22 Class;
- 23 (d) Approving as to form and content the proposed Notice of Proposed
24 Class Action Settlement and PAGA Claims Settlement (“Notice”),
25 substantially in the form attached as Exhibit “1”;
- 26 (e) Establishing the procedures and the deadlines by which Class
27 Members may file claims, assert objections to, or opt-out of, the
28 Settlement, where appropriate;

- 1 (f) Directing the mailing of the Notice(s) by first class mail to the
2 Class Members and PAGA Claim Members on a date following
3 the last date of the Settlement Class Period;
- 4 (g) Preliminarily approving the Settlement, including of the PAGA
5 Claim Settlement pursuant to the PAGA, subject only to the
6 objections of Settlement Class Members or Participating Class
7 Members and final review by the Court; and
- 8 (h) Preliminarily approving costs of administration payable to the
9 Settlement Administrator.

10 Knight shall not oppose Class Counsel's motions for preliminary approval and
11 final approval of the settlement so long as the motions and supporting papers are consistent with
12 the terms of this Agreement. Class Counsel shall provide Knight with a reasonable opportunity
13 to review and provide comments on the motions for preliminary and final approval of the
14 settlement before the motion and supporting papers are filed with the Court. Notwithstanding
15 the foregoing, Knight may, without opposing the motions for preliminary and final approval,
16 advise the Court if Knight disagrees with any of the factual statements included by Plaintiff in
17 the motion(s) and supporting papers. The Parties will further meet and confer as required to
18 agree upon the wording of the settlement packages to be sent to Class Members and PAGA
19 Claim Members, as well as the proposed orders for preliminary and final approval before filing.

20 **SETTLEMENT ADMINISTRATION**

21 33. The Parties have agreed to and request that the Court appoint CPT Group,
22 Inc., Atticus Administration or ILYM class action administration company, to be determined based
23 on competitive bids, as Settlement Administrator for this Settlement.

24 34. Knight will provide to the Settlement Administrator data, which lists for each
25 Class Member's and PAGA Claim Member's: name, last known address, dates of engagement
26 during the Settlement Class Period and PAGA Claims Period, Social Security Number, and data to
27 determine the number of calendar weeks worked by the Class Member and PAGA Claim Member.
28 This data will be based on Knight's settlement statements or other available business records in a

1 format acceptable to the Settlement Administrator.

2 35. The Settlement Administrator (along with any of its agents) shall represent
3 and warrant that it will: (a) provide reasonable and appropriate administrative, physical and
4 technical safeguards for any personally identifiable information (“PII”), which it receives from
5 Knight; (b) not disclose the PII to Class Counsel, Named Plaintiff, any party or third parties,
6 including agents or subcontractors, without Knight’s consent and keep the PII confidential; (c) not
7 disclose or otherwise use the PII other than to carry out its duties as set forth herein; and (d) promptly
8 provide Knight with notice if PII is subject to unauthorized access, use, disclosure, modification, or
9 destruction.

10 36. The Settlement Administrator will prepare, print and mail the Notice to the
11 Class Members and PAGA Claim Members; determine the amount of Individual Settlement
12 Payments and Individual PAGA Claim Payments under the terms and provisions of this Agreement;
13 keep track of and maintain an accurate record of requests for exclusion from the Settlement; provide
14 weekly status reports to the Parties’ counsel; provide a due diligence declaration for submission to
15 the Court prior to the final approval hearing; mail Individual Settlement Payment checks to
16 Participating Class Members and Individual PAGA Claim Payments to PAGA Claim Members;
17 print and provide Participating Class Members and PAGA Claim Members and the Plaintiff with
18 W-2 and 1099 forms as required under this Agreement and applicable law; provide a due diligence
19 declaration for submission to the Court upon completing the Settlement; and will perform such other
20 tasks as the Parties mutually agree or the Court orders. The Parties each represent they have no
21 financial interest in the Settlement Administrator or otherwise have a relationship with the
22 Settlement Administrator that could create a conflict of interest. To the extent a PAGA Claim
23 Member only receives an Individual PAGA Claim Payment, it will be sent separately.

24 37. Within approximately thirty (30) days following preliminary approval of the
25 settlement, a “Notice of Proposed Class Action Settlement” (“Notice”), in approximately the form
26 attached as Exhibit 1, and as approved by the Court, will be sent by the Settlement Administrator to
27 the Class Members and PAGA Claim Members, by first class mail. The Notice will include, non-
28 exclusively, information regarding the nature of the Action; a summary of the substance of the

1 Settlement; the Class and PAGA Claim Member definitions; the date for the final approval hearing;
2 the formula used for the Individual Settlement Payments and Individual PAGA Claim Payments;
3 for the Class, the ability to and process for filing a claim, disputing calendar weeks, objecting to the
4 Settlement, opting out of the settlement and the process for exclusion. The Notice will include the
5 time period during which the Class Member worked during the Settlement Class Period and/or a
6 statement of the number of calendar weeks the Class Member worked as stated in Knight's records.
7 The Notice will also inform Class Members that they must submit any objections or requests for
8 exclusion (opt-outs) within the Notice Period for them to be valid and effective. The Notice Period
9 will commence on the date Notices are mailed to Class Members and end sixty (60) days later.
10 Within ten (10) days of Plaintiff's filing of a Motion for Preliminary Approval of this Settlement
11 with the of the written materials required by CAFA's notice requirements, as set forth in 28 U.S.C.
12 § 1715.

13 38. Skip-trace for Returned Mail: If a new address is obtained by way of a
14 returned Notice, then the Settlement Administrator will promptly forward the original Notice to the
15 updated address via first-class regular U.S. Mail indicating on the original Notice the date of such
16 re-mailing. Where a Notice is returned as undeliverable, without a forwarding address, the
17 Settlement Administrator will perform a computer/SSN and "skip trace" search to attempt to obtain
18 an updated address. The Parties agree to cooperate with the Settlement Administrator to locate a
19 more recent address for Class Members and PAGA Claim Members where necessary. Any Notices
20 that are re-mailed to any Class Members and PAGA Claim Members due to a bad address or for
21 forwarding will be identical to the original Notice.

22 39. The Notice will include a procedure by which a Class Member may challenge
23 the number of calendar weeks identified in his/her Notice by submitting a written challenge to the
24 Settlement Administrator by the expiration of the Notice Period. A Class Member challenging the
25 number of calendar week(s) identified on the Notice must also submit documentary evidence
26 sufficient to prove the number of calendar weeks worked during the Class Period. Knight shall have
27 the right to respond to the challenge by any Class Member. The Parties will meet and confer to
28 resolve mutually the challenge to the number of calendar weeks or any other specifics raised by

1 Settlement Class Members and make a final and binding determination without hearing or right of
2 appeal without hearing. To the extent they cannot be resolved, the Settlement Administrator will
3 make a final determination that will be binding on the Parties.

4 40. Claim Process: Only Participating Class Members Will Receive Settlement
5 Payments. The settlement will be on a claims-made basis (other than payments from the PAGA
6 allocation), meaning Class Members shall be required to complete and submit to the Settlement
7 Administrator a Claim Form, similar to Exhibit 2, postmarked no later than the last day of the Notice
8 Period, unless otherwise ordered by the Court, to become a Participating Class Member. Therefore,
9 individual Class Members will be entitled to receive a settlement payment (other than payments
10 from the PAGA allocation) only if the Class Member does all of the following: (i) completes the
11 Claim Form in its entirety; (ii) signs the Claim Form certifying that its contents are true and correct;
12 and (iii) returns the Claim Form that is postmarked on or before the expiration of the Notice Period.
13 Settlement Class Members who do not properly or timely submit a claim form will not be entitled
14 to any portion of the Net Settlement Fund (other than payments from the PAGA allocation), but
15 shall be bound by the release contained in this Agreement.

16 41. Opt-Out Procedure: Unless such a Class Member opts out of the
17 Settlement described in this Agreement, he/she will be a Settlement Class Member, and will be
18 bound by the terms and conditions of this Agreement including the release of claims. A Class
19 Member will not be entitled to opt out of the Settlement established by this Agreement unless
20 he or she does all of the following: (i) makes a proper written request for exclusion from the
21 Settlement; (ii) signs the opt-out request; and (iii) returns the opt-out request so it is postmarked
22 on or before the expiration of the Notice Period. Opt-out requests do not apply to the PAGA
23 Released Claims and will not exclude PAGA Claim Members from the release of PAGA
24 Released Claims.

- 25 (a) Upon receipt of any opt-out request within the Notice Period, the
26 Settlement Administrator will review the request to verify the
27
28

1 information contained therein, and to confirm that the request
2 complies with the requirements of this Agreement.

3 (b) Any Class Member who fails to submit a timely, complete and
4 valid request to opt out of the Settlement will be barred from
5 opting out of this Agreement or the Settlement. The Settlement
6 Administrator will not review or consider any opt-out request
7 postmarked after the end of the Notice Period absent agreement
8 from the Parties. It will be conclusively presumed that, if an opt-
9 out request is not postmarked on or before the end of the Notice
10 Period, the Class Member did not make the request in a timely
11 manner. A declaration submitted by any Class Member attesting
12 to the mailing of an opt-out request on or before the expiration of
13 the Notice Period will be insufficient to overcome the conclusive
14 presumption that the opt-out request was not postmarked on or
15 before the expiration of the Notice Period. Absent mutual
16 agreement by the Parties, under no circumstances will the
17 Settlement Administrator have the authority to extend the
18 deadline for Class Members to file a request to opt out of the
19 Settlement.

20 42. Within seven (7) days of the close of the Notice Period, the Settlement
21 Administrator will provide Class Counsel and Knight's counsel with a report listing the number of
22 Class Members and PAGA Claim Members who received Notice, the number of Settlement Class
23 Members and PAGA Claim Members, the number of Participating Class Members, the number and
24 names of those Class Members who submitted opt-out notices, the total amount of all Individual
25 Settlement Payments to be made to Settlement Class Members, the total amount of all Individual
26 PAGA Claim Payments to be made to the PAGA Claim Members, and the average and maximum
27 Individual Settlement Payments and Individual PAGA Claim Payments. After receiving the
28 Settlement Administrator's report, Class Counsel and Knight's counsel will jointly review the same

1 Order or to enter the Judgment or any part thereof as provided for herein; or (b) any material
2 conditions to the Settlement are not satisfied; or (c) the Court disapproves this Settlement in its
3 entirety, or any material term in this Settlement, including any amendments thereto, and such
4 disapproval becomes final by reason of its affirmance on appeal or lapse of time or otherwise; or (d)
5 the Court approves this Settlement, including any amendments, but any such judgment and approval
6 is finally reversed on appeal, this Settlement will be void and the Preliminary Approval Order and
7 the Final Approval Order and Judgment will be vacated upon application to the Court. In such event,
8 (a) this Settlement (except for paragraph 65) will be terminated and become void and of no effect;
9 (b) any actions taken or to be taken in connection with this Settlement and the settlement terms will
10 become null and void and of no effect; (c) this Settlement and the settlement terms and any hearings
11 or proceedings will not be referred to or used as evidence for or against any Party or Class Member
12 in this or any other action or proceeding; (d) the Parties will revert to their prior positions before
13 entering this Agreement, including that: i) the Order to arbitrate the claims shall continue to be
14 operative; and ii) the Complaint and the amendments contemplated by this Agreement shall be non-
15 operative; and (e) all proceedings, including individual arbitration requirements, will resume 45
16 days thereafter as if this Settlement had not been proposed for approval of the Court. If any monies
17 for attorneys' fees, costs, and expenses have been paid to Class Counsel or any monies for a class
18 representative service payment have been paid to Plaintiff, Class Counsel agree to return
19 immediately such monies within ten (10) business days.

20 49. If the Court issues a Final Approval Order, Plaintiff, Settlement Class
21 Members and all Releasing Parties will fully, completely, and finally release all Released Parties
22 (see paragraphs 51-57) of all the Released Claims, and Plaintiff, all PAGA Claim Members and all
23 PAGA Releasing Parties will fully, completely, and finally release all Released Parties of all PAGA
24 Released Claims.

25 50. Upon receipt of funds from Knight, the Settlement Administrator will issue
26 and send out settlement checks to Settlement Class Members and PAGA Claim Members. All
27 disputes relating to the Settlement Administrator's performance of its duties will be referred to the
28 Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this

1 heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
2 guardians, personal representatives, and successors-in-interest, (collectively, “Releasing Parties”),
3 fully release and discharge Released Parties from any and all Released Claims arising during the
4 Class Period. Upon the final approval by the Court of this Settlement, and except as to such rights
5 or claims as may be created by this Settlement, Plaintiff, on his own behalf and all PAGA Claim
6 Members and all persons purporting to act on their behalf or purporting to assert a claim under or
7 through them, including, but not limited to, their dependents, heirs and assigns, beneficiaries,
8 devisees, legatees, executors, administrators, trustees, conservators, guardians, personal
9 representatives, and successors-in-interest (collectively, “PAGA Releasing Parties”), fully release
10 and discharge Released Parties from any and all PAGA Released Claims.

11 54. “Released Claims” are claims, debts, liabilities, demands, obligations,
12 guarantees, costs, expenses, interest, attorneys’ fees, damages, action or causes of action under state
13 including: (1) failure to provide timely duty-free meal periods in violation of California Labor Code
14 sections 512, 516, 226.7 and Section 11 of IWC Wage Order No. 9; (2) failure to pay separately and
15 hourly for non-driving time and rest breaks in violation of California Labor Code sections 1194,
16 1194.2 and 226.2; ; (3) failure to authorize and permit paid rest breaks and pay missed rest break
17 premiums in violation of California Labor Code sections 226.7, 516 and Section 12 of IWC Wage
18 Order No. 12); (4) failure to timely furnish accurate itemized wage statements in violation of Labor
19 Code sections 226, 226.2, and Section 5 of IWC Wage Order No. 9-2001; (5) failure to pay wages
20 upon separation in violation of California Labor Code sections 201-203); (6) unfair competition for
21 all possible claims listed above under California Business and Professions Code sections 17200 et.
22 seq. and (7) a PAGA cause of action for all possible claims listed above and all other civil penalty
23 claims under California Labor Code sections 226.3, 226.7, 512, 558, 1174, 1174.5 (California Labor
24 Code section 2698, et al.) (“Released Claims”). The release of the foregoing claims and definition
25 of Released Claims, extends to all theories of relief regardless of whether the claim is, was or could
26 have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief,
27 whether under California law, federal law, any state law or common law (including, without
28 limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations,

1 California’s Business and Professions Code section 17200), any and all claim under the Fair Labor
2 Standards Act based on the factual allegations in the Complaint and any benefits under any benefit
3 plan, program or policy sponsored or maintained by the Company, including, but not limited to the
4 Employee Retirement Income Security Act, 29 U.S.C. §1001, et seq., but not vested benefits under
5 any pension or 401(k) plan or other ERISA-governed benefit plan. “Released Claims” includes all
6 types of relief available for the above-referenced claims, including any claims for damages,
7 restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive
8 relief, declaratory relief, or liquidated damages. In addition, each member of the Class who does not
9 submit a valid request for exclusion forever agrees that he or she will not institute any action, nor
10 accept back liquidated damages, punitive damages, penalties of any nature (other than the PAGA
11 Released Claims), attorneys’ fees and costs, or any other relief from any other suit, class or collective
12 action, administrative claim or other claim of any sort or nature whatsoever against Knight, for the
13 Settlement Class Period for the claims being released herein. In accordance with the Court’s
14 February 17, 2023 Order, the Parties agree that, notwithstanding anything to the contrary herein, the
15 foregoing released claims are limited to those based on the factual allegations in Plaintiff’s operative
16 Complaint.

17 55. “PAGA Released Claims” means, all claims, causes of action, damages,
18 wages, benefits, expenses, penalties, debts, rights, demands, liabilities, obligations, attorneys’ fees,
19 costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, whether
20 known or unknown, suspected or unsuspected sought pursuant to the PAGA (California Labor Code
21 section 2698, et al.) that occurred at any time during the PAGA Claims Period and that are predicated
22 upon any Labor Code violations of the PAGA in the Action, including, but not limited to all possible
23 California Labor Code Claims listed in the Complaint or that could have been listed in the Action
24 based on the factual and/or legal allegations therein, including but not limited to California Labor
25 Code section 226.2, 226, 226.3, 226.7, 512, 516, 558, 1174, 1174.5, 1194 and 1194.2. In accordance
26 with the Court’s February 17, 2023 Order, the Parties agree that, notwithstanding anything to the
27 contrary herein, the foregoing released claims are limited to those based on the factual allegations
28 in Plaintiff’s operative Complaint.

1 or unknown, suspected or unsuspected, which now exist, or heretofore existed or may hereafter
2 exist, which if known, might have affected his decision to enter into this release. Plaintiff will be
3 deemed to waive any and all provisions, rights, and benefits conferred by any law of the State of
4 California, any law of the United States, any other state or territory of the United States, principle
5 of common law or equity, which governs or limits a person’s release of unknown claims. In making
6 this waiver Plaintiff understands and acknowledge that he may discover facts in addition to or
7 different from those that are currently known or believed to be true regarding the subject matter of
8 this release, but agrees that it is his intention to fully, finally, and forever settle and release any and
9 all claims against the Released Parties, known or unknown, suspected or unsuspected, which now
10 exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery
11 or existence of such additional or different facts. The foregoing waiver includes an express waiver,
12 to the fullest extent permitted by law by Plaintiff of any and all rights under California Civil Code
13 section 1542, as well as under any other federal or state statutes or common law principles of similar
14 effect. California Civil Code section 1542, which is expressly waived herein, provides:

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

18 **NO INJUNCTIVE RELIEF**

19 59. The Parties agree that the settlement does not include injunctive relief against
20 Knight or the Released Parties.

21 **PARTES’ AUTHORITY**

22 60. The signatories represent that they are fully authorized to enter into this
23 Settlement and bind the Parties to the terms and conditions thereof.

24 **MUTUAL FULL COOPERATION**

25 61. The Parties agree to fully cooperate with each other to accomplish the terms
26 of this Settlement, including but not limited to, execution of such documents and taking such other
27 action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this
28 Settlement will use their best efforts, including all efforts contemplated by this Settlement and any

1 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
2 CONTEMPLATED BY THIS AGREEMENT.

3 **NO PRIOR ASSIGNMENTS**

4 64. The Parties and their counsel represent, covenant, and warrant they have not
5 directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
6 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
7 or rights released and discharged except as set forth herein.

8 **NO ADMISSION**

9 65. Nothing contained herein, nor the consummation of this Settlement, is to be
10 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
11 Knight. All Parties hereto have entered into this Settlement solely with the intention to avoid further
12 disputes and litigation with the attendant inconvenience and expense.

13 **ENFORCEMENT ACTIONS**

14 66. If Knight or Plaintiff, the signatories to this Settlement, institute a legal action
15 or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or
16 to declare rights and/or obligations under this Settlement, the successful Party or Parties shall be
17 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs',
18 including expert witness fees incurred in connection with any enforcement actions. This provision
19 will not apply to any legal action or other proceeding instituted by any person or entity other than
20 Plaintiff or Knight.

21 **NOTICES**

22 67. Unless otherwise specifically provided, all notices, demands or other
23 communications given will be in writing and will be deemed to have been duly given by the third
24 business day after mailing by United States registered or certified mail, return receipt requested,
25 addressed as follows:

1 modifications.

2 **INTEGRATION CLAUSE**

3 71. This Settlement contains the entire agreement between the Parties relating to
4 the settlement and transaction contemplated hereby, and upon its full execution by the Parties all
5 prior or contemporaneous agreements, understandings, representations, and statements, whether
6 oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
7 hereunder may be waived except in writing

8 **GOVERNING LAW**

9 72. This Agreement shall be interpreted, construed, enforced, and administered
10 in accordance with the laws of the State of California, without regard to conflict of law rules.

11 **BINDING OF ASSIGNS**

12 73. This Settlement will be binding upon and inure to the benefit of the Parties
13 and their respective heirs, trustees, executors, administrators, successors and assigns.

14
15 **SIGNATORIES**

16 74. It is agreed that because the members of the Class are so numerous, it is
17 impossible or impractical to have each member of the Class execute this Settlement. The Notice will
18 advise all Class Members and PAGA Claim Members of the binding nature of the release, and the
19 release will have the same force and effect as if this Settlement were executed by each member of
20 the Class and each PAGA Claim Member.

21 **PUBLIC COMMENT**

22 75. Plaintiff and Knight, and their respective counsel, recognize and accept that
23 the Parties desire that the terms of this Stipulation, the fact of the settlement embodied in this
24 Stipulation, the disposition of the Action, and all matters relating to the litigation of the Action,
25 including discovery and mediation proceedings therein, and evidence obtained during this Action
26 or any Related Cases, will not be discussed with or presented to the media. Accordingly, Plaintiff
27 and Class Counsel will not initiate or have any communications at all with the media, other than to
28 direct the media to the public records of the Settlement on file with the Court, or post any

1 advertisements or marketing information seeking other clients to represent in other lawsuits against
2 Knight, including on websites or through social media, regarding this Settlement and its terms.

3 **COUNTERPARTS**

4 76. This Settlement may be executed in counterparts, and when each Party has
5 signed and delivered at least one such counterpart, each counterpart will be deemed an original, and,
6 when taken together with other signed counterparts, will constitute one Settlement, which will be
7 binding upon and effective on all Parties. Signatures may be provided in "wet ink", via facsimile or
8 via PDF.

9 **IT IS SO STIPULATED.**

10 Dated: ~~November 22, 2021~~
11 2/28/2023

PLAINTIFF ROBERT MARTINEZ



Robert Martinez

12
13
14 February 24, 2023
15 Dated: ~~November 22, 2021~~ *Rahm*

KNIGHT TRANSPORTATION, INC.



By: Todd Carlson
Title: General Counsel

20 **AS TO FORM ONLY:**

21
22 Dated: ~~November 22, 2021~~
23 February 25, 2023

DLA PIPER LLP



Richard H. Rahm
Attorneys for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: ~~November 11, 2021~~

ACKERMANN & TILAJEF, P.C.

Craig Ackermann

Craig J. Ackermann
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

1 **SETTLEMENT ADMINISTRATOR**
2 **[Address]**

3 **NOTICE OF CLASS ACTION SETTLEMENT, SETTLEMENT HEARING,**
4 **AND EXCLUSION PROCEDURES**

5 *Robert Martinez, et. al v. Knight Transportation, Inc., et al.*
6 United States District Court, Eastern District of California, Case No. 1:16-CV-01730-DAD-SKO.

7 **If you are current or former truck driver employed by defendant Knight Transportation, Inc.,**
8 **who advised Knight that (1) you resided in Oregon, Nevada, Arizona, Utah, and/or Colorado,**
9 **(2) you are or were paid in whole or in part on a piece-rate basis, and (3) you drove one or**
10 **more routes of five hours or more entirely within the State of California for Knight during the**
11 **“Class Period” from September 30, 2012 through [Preliminary Approval], please read this**
12 **Notice carefully. Knight’s records show you are entitled to participate in this class action**
13 **settlement and receive an Individual Settlement Payment and Individual Private Attorney**
14 **General Claim (“PAGA”) Payment. This Notice relates to the terms of a proposed settlement**
15 **of the *Martinez v. Knight* class and PAGA action. Your rights may be affected by the legal**
16 **proceedings in this action.**

17 **IMPORTANT STEPS AND DEADLINES:**

- 18 • **If you wish to receive your Individual Settlement Payment, you must submit a**
19 **claim form as described in this Notice. If the Settlement is granted Final**
20 **Approval by the Court, then your settlement share will be mailed to you as**
21 **described in this Notice if you properly submit a claim form. If your address**
22 **has changed from the address that Knight has for you, you should notify the**
23 **Settlement Administrator listed in this Notice.**
- 24 • **If you do NOT wish to participate in this class Settlement and do NOT wish to**
25 **receive an Individual Settlement Payment, you may request exclusion from the**
26 **class portion of the Settlement. The request for exclusion must be postmarked**
27 **on or before [60 days after this Notice was mailed]. Instructions on how to**
28 **request exclusion from this class Settlement are included in this Notice. Any**
exclusion from the class Settlement will not impact the PAGA settlement.
- **If you wish to object to the class Settlement, the last day to file your written**
objection with the Court is [60 days after this Notice was mailed] unless you
opt out. Instructions on how to object to the class Settlement are included in
this Notice.
- **If you do nothing in response to this Notice, you will release your claims under**
the class Settlement but will not receive any payment for the class Settlement.

29 ***I. WHY IT IS IMPORTANT TO READ THIS NOTICE:***

30 Judge _____ of the United States District Court for the Eastern District of California (the “District
31 Court”) has granted preliminary approval of a proposed class action settlement (the “Settlement”)
32 of all Released Claims (defined below) in this case for all current and former truck drivers working

1 under with Knight at any time from September 30, 2012 and [Date of Preliminary Approval Order/]
2 (the “Class Period”). Judge _____ has also preliminarily approved the settlement of PAGA
3 Released Claims (defined below) for all current and former California-based drivers working with
4 Knight at any time from September 27, 2015 up to preliminary approval of this Agreement and
5 [Date of Preliminary Approval Order] (the “PAGA Class Period”).

6 The purpose of this Notice is to inform you of the terms of the proposed Settlement and to discuss
7 your rights and options in connection with the lawsuit and the Settlement. It is important that you
8 read this Notice carefully as your rights may be affected by the Settlement.

9 This notice summarizes the proposed settlement. For the precise terms and conditions of
10 the settlement, please see the full settlement agreement available at www._____.com, or by
11 accessing the Court docket in this case through the Court’s Public Access to Court Electronic
12 Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of
13 the Court for the United States District Court for the Eastern District of California, _____,
14 between 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

15 For any questions regarding this Settlement, you may contact Class Counsel:

16 Craig J. Ackermann (Bar No. 229832)
17 cja@ackermanntilajef.com
18 ACKERMANN & TILAJEF, P.C
19 1180 South Beverly Drive, Suite 610
20 Los Angeles, CA 90035
21 Telephone: 310.277.0614

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

24 **II. WHAT THIS CLASS ACTION CASE IS ABOUT:**

25 Plaintiff Robert Martinez sued Knight Transportation, Inc. and its successor in interest Knight-Swift
26 Transportation Holdings, Inc. (“Knight”) making the following claims: (1) failure to pay Class
27 Members provide duty-free meal breaks and pay missed meal break premium in violation of Labor
28 Code § 512 and 226.7 and Wage Order No. 9-2001, § 11; (2) failure to pay separately and hourly
for time spent on rest breaks, inspections, fueling, cleaning, paperwork, layovers spent in the tractor
cab, and other nondriving tasks (the “Non-Driving Tasks”) in violation of Labor Code § 1194 and
226.2; (3) failure to provide paid rest breaks and/or pay missed rest break premiums for unpaid rest
breaks to Class Members in violation of Labor Code § 226.7 and Wage Order No. 9-2001, § 12(A)-
(B); (4) failure to pay all wages owed upon termination of employment in violation of Labor Code
§ 203; (5) failure to issue complete and accurate wage statements to Plaintiff and Class Members
who were employed by Defendant from one year prior to the filing of the Complaint (“Wage
Statement Subclass”) in violation of Labor Code § 226(a) and 226.2; (6) unfair, unlawful, and
fraudulent business practices, in violation of Business and Professions Code §§ 17200 et seq., and
(7) PAGA Penalties pursuant to Labor Code § 2698, *et seq.* (the “Action”).

Knight denies Plaintiff’s allegations and contends that it properly paid drivers lawfully pursuant to
applicable law and that it provided all applicable breaks. Knight contends the DOT’s FMCSA has
preempted (nullified) California’s meal and rest break laws, which has been confirmed by the federal

1 Court of Appeals, and that the same federal appellate court and the California Supreme Court has
2 determined that piece-rate pay plans, like Knight's, can legally include non-driving time, provided
3 that the parties agreed that such pay would be all-inclusive. The Court has not decided whether
Knight did anything wrong.

4 No court has ruled on the merits of the lawsuit. Ultimately, this Settlement was reached for this
Action.

5 **III. SETTLEMENT OF THE CLAIMS ALLEGED IN THE LAWSUIT:**

6 Since September 27, 2016, the Parties to this lawsuit have been investigating and litigating the
7 claims asserted in the lawsuit. The Parties were able to come to an agreement and, based on a
8 comprehensive investigation of the claims, the Parties and their counsel have reached a settlement.

9 Named Plaintiff and his counsel recognize the expense and length of proceedings necessary to
10 continue the litigation against Knight in Court, Knight's federal preemption and other defenses, ,
11 potential impediments to litigation of the PAGA claims, and any possible appeals. Plaintiff and
12 his counsel also have taken into account the uncertainty and risk of the outcome of further
13 litigation, and the difficulties and delays inherent in such litigation. Plaintiff and his counsel also
14 have taken into account the extensive litigation of this and other driver actions against trucking
companies in their settlement negotiations that have occurred. Based on the foregoing, Named
Plaintiff, in his capacity as class representative, and Class Counsel, in their capacity as attorneys
for Class Members and for the settlement of the PAGA Released Claims, believe the Settlement
confers substantial benefits to the Class and Class Members, is a fair, adequate and reasonable
settlement, and is in the best interest of these employees.

15 Through the litigation and the negotiations that resulted in this Settlement, Knight has not admitted
16 any liability or wrongdoing. However, for multiple reasons, Knight has concluded that it is in its
best interests to put to rest and settle the lawsuit.

17 **IV. THE TERMS OF THE PRELIMINARILY APPROVED SETTLEMENT:**

18 The Court certified a class that includes: All current and former truck drivers employed by
19 defendant Knight Transportation, Inc., who advised defendant that they resided in Oregon, Nevada,
Arizona, Utah, and/or Colorado, who were paid in whole or in part on a piece-rate basis, and who
20 drove one or more routes of five hours or more entirely within the State of California for defendant
during the "Class Period" from September 30, 2012 up to [Date of Preliminary Approval Order].

21 Knight has agreed to pay \$400,000.00 (the "Gross Settlement Value"), allocated among the
22 following: (1) monetary relief to the Class Members who file claim forms ("Participating Class
23 Members"); (2) attorneys' fees and reimbursement of costs and expenses awarded by the Court
to Class Counsel; (3) a service award by the Court to Plaintiff ("Service Award"); (4) claims
24 administration expenses, including the costs of mailing this Notice to you and administering the
settlement payments should the Settlement be effective ("Administration Costs"); and (5)
25 penalties pursuant to the PAGA paid to the California Labor and Workforce Development
Agency ("LWDA") and PAGA Claim Member(s), who include all Class Members working for
26 Knight during the PAGA Claims Period ("PAGA Claim Members").

27 The distribution of the Settlement is as follows:
28

1 (1) The total amount of Class Counsel’s attorneys’ fees awarded will be subject to the
2 Court’s discretion and approval, but in any event will not exceed \$100,000 (the “Fees
3 Award”). The Class Counsel’s Fees Award is for attorneys’ fees, past, present and future,
4 incurred in the lawsuit. You will not be required to pay Class Counsel for their
5 representation of you in the lawsuit;

6 (2) The total amount of the costs/expenses up to an additional \$20,000 awarded to Class
7 Counsel will be subject to the Court’s discretion and approval (the “Costs Award”). The
8 Class Counsel’s Costs Award is for expenses, past, present and future, incurred in the
9 lawsuit;

10 (3) The amount of the Service award to Plaintiff will be subject to the Court’s discretion
11 and approval, but in any event will not exceed \$10,000.00, in recognition of his service in
12 bringing this action on behalf of himself and all similarly-situated individuals and for a
13 general release of all of his claims;

14 (4) The Administration Costs incurred by the Settlement Administrator, _____. These
15 costs and fees are associated with the administration of this Settlement by a neutral third
16 party who is responsible for all mailings required by the Settlement, sending payments to
17 Class Members, and associated recordkeeping and obligations;

18 (5) A payment to the LWDA for the portion of civil penalties recovered in this Settlement
19 under the PAGA due to the State of California, in the amount of \$15,000, and a payment
20 of \$5,000 divided equally between all PAGA Claim Members;

21 (6) The monetary relief (“Net Settlement Amount”) paid to Participating Class Members
22 will be the total of the settlement (\$400,000.00) less the Class Counsel’s Fees Award and
23 Cost Award, the Plaintiffs’ Service Award, the Administration Costs approved by the
24 Court, the PAGA amount agreed to pay the LWDA and PAGA Claim Members, and
25 employer-side taxes.

26 ***V. HOW YOUR SHARE OF THE INDIVIDUAL SETTLEMENT PAYMENT AND***
27 ***INDIVIDUAL PAGA CLAIM PAYMENT WILL BE CALCULATED:***

28 Individual Settlement Payment. Participating Class Members (who properly submit Claim Forms
and do not opt out) shall be entitled to Individual Settlement Payments as follows: A dollar value
will be assigned to each calendar week (Sunday to Saturday) during which Participating Class
Members were engaged with Knight from September 30, 2012 up to [Date of Preliminary
Approval Order] (“Class Period”). The dollar value of each calendar week will be calculated in
the following manner: The net settlement amount will be divided by the total number of calendar
weeks worked by all Settlement Class Members. during the Class Period to determine the
“Calendar Week Value.” Each Participating Class Member’s number of calendar weeks worked
during the Class Period will be multiplied by the Calendar Week Value. The resulting sum (plus
the PAGA amount for PAGA Claim Members) will equal each Participating Class Member’s
“Individual Settlement Payment.” In other words, those drivers working for longer periods of time
during the Class Period will generally receive more than those working for a shorter time.

From each Class Member’s Individual Settlement Payment, 15% alleged wages or damages, 45%
will be designated as alleged penalties, and 40% will be designated as alleged interest.

Individual PAGA Claim Payment. The \$5,000 allocated to PAGA Claim Members pursuant to
settlement of PAGA Released Claims shall be divided equally between all PAGA Claim Members.

1 The individual payments to PAGA Claim Members shall be referred to as “Individual PAGA Claim
2 Payments.” This amount shall be added to the amount they will receive as Participating Class
3 Member or will be sent separately for Settlement Class Members who have not filed a Claim Form
4 or Class Members that have opted out of the Settlement.

5 PAGA Claim Payments will be designated as penalties for tax purposes.

6 Nothing in this Notice or the Settlement should be construed or relied upon as tax advice, and
7 Plaintiff, Participating Class Members, and PAGA Claim Members understand and agree that they
8 will be solely responsible for the payment of any taxes and penalties assessed on their respective
9 payments and will defend, indemnify, and hold the parties to the Agreement free and harmless from
10 and against any claims resulting from treatment of such payments as non-taxable reimbursements
11 or penalties or interest. Neither Class Counsel nor Knight makes any representations concerning
12 the tax consequences of this Settlement or participation in it, and you are advised to seek your own
13 personal tax advice prior to acting in response to this Notice.

14 **VI. OPTIONS YOU HAVE REGARDING THE CLASS ACTION SETTLEMENT:**

15 **1. Do Nothing And Release Your Claims but Not Receive Any Check**

16 If the Settlement becomes final, and you fail to request exclusion from the settlement (as described
17 below) and you fail to submit a Claim Form (also described below), you will release your Released
18 Claims (described below), but will not receive any check for the settlement and release of those
19 claims.

20 **2. File A Claim Form And Release Your Claims and Receive a Check**

21 The settlement is on a claims-made basis, meaning you and other Class Members are required to
22 complete and submit to the Settlement Administrator a Claim Form postmarked no later than [date].
23 You will be entitled to receive a settlement payment only if you do all of the following: (i)
24 completes the Claim Form in its entirety; (ii) sign the Claim Form certifying that its contents are
25 true and correct; and (iii) return the Claim Form that is postmarked on or before [date]. Settlement
26 Class Members who do not properly or timely submit a claim form will not be entitled to any
27 portion of the Net Settlement Amount, but shall be bound by the release described in this Notice.
28 You will be mailed a check for your share of the Settlement within 45 days of the Effective Date
of the Settlement (as defined in the settlement). You will have one hundred and eighty (180) days
from the date the check is issued to cash or deposit your check. After 180 days, the amount of any
un-cashed checks will be deposited with the Department of Industrial Relations Unpaid Wages
Fund in California in the name of the Settlement Class Member who failed to cash his or her check.

3. Procedure For Requesting Exclusion From The Settlement Class

If you do not wish to receive your portion of the class Settlement and do not wish to be bound by
the Settlement of the Released Claims, you may exclude yourself from the Settlement by mailing
to the Settlement Administrator, _____, located at [address], postmarked on or before [60 days
after this Notice was mailed], a written statement expressing your desire to be excluded from the
Settlement in the *Martinez v. Knight Transportation, Inc., et al.* lawsuit. Your request for exclusion
shall be deemed valid only if: (1) you have provided on the request for exclusion your name and
last four digits of your social security number, (2) you have dated and signed the request for
exclusion; and (3) the name and last four digits of the social security number you provided on the
request for exclusion match Knight’s records. Your written request for exclusion must state (or be

1 materially similar to the below language) as follows:

2 “I wish to be excluded from the Settlement in *Martinez. v. Knight Transportation,*
3 *Inc., et al.*, United States District Court, Eastern District of California, Case No.
4 1:16-CV-01730-DAD-SKO. I understand that in asking to be excluded from the
settlement class, I will not receive any portion of the class Settlement approved by
the Court in this case. I understand that this does not impact the PAGA settlement.”

5 Requests for exclusion that do not include all required information, or that are not submitted on a
6 timely basis, will be deemed null, void and ineffective. If you submit a valid request for exclusion
7 from the Settlement, you will not receive any monetary recovery from this Settlement, and you will
8 not have any right to object, appeal or comment. You will not be bound by the terms of the proposed
9 class Settlement, if it is approved, or the Final Judgment in this lawsuit. If you timely submit a valid
10 request for exclusion from the Settlement, you preserve your right to bring your own action against
11 Knight regarding claimed damages arising during the Class Period. If approved by the Court you,
12 will be considered a PAGA Claim Member regardless of whether you request exclusion from the
13 Settlement Class.

10 **4. Procedure For Challenging Your Number Of WorkWeeks**

11 Your calendar weeks employed during the Class Period are calculated by the Settlement
12 Administrator as _____.

13 If you believe your calendar workweeks number listed above is not correct, you may send a letter
14 to the Settlement Administrator indicating what you believe to be the correct number of calendar
15 weeks. You may also send any documents or other information that supports your belief that the
16 number listed above is incorrect. The Settlement Administrator will resolve any dispute based upon
Knight’s records and any information you provide. Please be advised that the number of calendar
weeks you worked during the Class Period is presumed to be correct.

17 **5. Procedure For Objecting To The Settlement**

18 You can ask the Court to deny approval to the Settlement by filing an objection. You can’t ask the
19 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 lawsuit will continue as did before
the Settlement was reached. If that is what you want to happen, you must object.

20 You may object to the proposed settlement in writing. You may also appear at the Final Approval
21 Hearing, either in person or through your own attorney. If you appear through your own attorney,
22 you are responsible for paying that attorney. All written objections and supporting papers must (a)
23 clearly identify the case name and number (*Martinez v. Knight Transportation, Inc., et al.*, Case
24 No. 1:16-CV-01730-DAD-SKO), (b) be submitted to the Court either by mailing them to the Class
Action Clerk, United States District Court for the Eastern District of California [Address], or by
filing them in person at any location of the United States District Court for the Eastern District of
California, and (c) be filed or postmarked on or before [60 days after mailing of notice].

25 If you do not file your written objections in the manner provided above you shall be deemed to
26 have waived such objections and shall be foreclosed from making any objections (by appeal or
otherwise) to the Settlement.

27 *If you submit a request for exclusion from the Settlement Class you cannot object to the Settlement,*
28 *and any objection you file will be deemed to have been waived by your request for exclusion.*

1 Any Class Member who is satisfied with the proposed Settlement need not appear at the Settlement
2 Hearing. The location, date and time of the Settlement Hearing is set forth in Section VIII of this
3 Notice.

3 **VII. RELEASE OF CLAIMS BY SETTLEMENT CLASS MEMBERS:**

4 As of the Effective Date (as defined in the Settlement Agreement), anyone who has not excluded
5 themselves from this class Settlement will release all Released Parties from the Released Claims as
6 defined below.

6 “Released Parties” are defined as: a) all of Knight’s present and former parent companies,
7 subsidiaries, related or affiliated companies (including but not limited to Knight-Swift
8 Transportation Holdings, Inc. and Knight Truck and Trailer Sales LLC); (b) Knight’s divisions,
9 and (c) the present and former officers, directors, members, managers, shareholders, agents,
10 insurers, administrators, fiduciaries, trustees, operators, partners, joint ventures, franchisees,
11 franchisors, consultants, contractors, attorneys, successors or assignees.

10 “Released Claims” is defined as claims for: (1) failure to provide timely duty-free meal periods in
11 violation of California Labor Code sections 512, 516, 226.7 and Section 11 of IWC Wage Order
12 No. 9; (2) failure to pay separately and hourly for non-driving time and rest breaks in violation of
13 California Labor Code sections 1194, 1194.2 and 226.2; ; (3) failure to authorize and permit paid
14 rest breaks and pay missed rest break premiums in violation of California Labor Code sections
15 226.7, 516 and Section 12 of IWC Wage Order No. 12); (4) failure to timely furnish accurate
16 itemized wage statements in violation of Labor Code sections 226, 226.2, and Section 5 of IWC
17 Wage Order No. 9-2001; (5) failure to pay wages upon separation in violation of California Labor
18 Code sections 201-203); (6) unfair competition for all possible claims listed above under California
19 Business and Professions Code sections 17200 et. seq. and (7) a PAGA cause of action for all
20 possible claims listed above and all other civil penalty claims under California Labor Code sections
21 226.3, 226.7, 512, 558, 1174, 1174.5 (California Labor Code section 2698, et al.) (“Released
22 Claims”). The release of the foregoing claims and definition of Released Claims, extends to all
23 theories of relief regardless of whether the claim is, was or could have been alleged as separate
24 claims, causes of action, lawsuits or based on other theories of relief, whether under California
25 law, federal law, any state law or common law (including, without limitation, as violations of the
26 California Labor Code, the Wage Orders, applicable regulations, California’s Business and
27 Professions Code section 17200), any and all claim under the Fair Labor Standards Act based on
28 the factual allegations in the Complaint and any benefits under any benefit plan, program or policy
sponsored or maintained by the Company, including, but not limited to the Employee Retirement
Income Security Act, 29 U.S.C. §1001, et seq., but not vested benefits under any pension or 401(k)
plan or other ERISA-governed benefit plan. “Released Claims” includes all types of relief available
for the above-referenced claims, including any claims for damages, restitution, losses, penalties,
fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or
liquidated damages. In addition, each member of the Class who does not submit a valid request for
exclusion forever agrees that he or she will not institute any action, nor accept back liquidated
damages, punitive damages, penalties of any nature (other than the PAGA Released Claims),
attorneys’ fees and costs, or any other relief from any other suit, class or collective action,
administrative claim or other claim of any sort or nature whatsoever against Knight, for the
Settlement Class Period for the claims being released herein.

As part of the Released Claims, Settlement Class Members will be deemed to waive any and all
provisions, rights, and benefits conferred by any law of the State of California, any law of the

1 United States, any other state or territory of the United States, principle of common law or equity,
2 which governs or limits a person's release of unknown claims regarding the Released Claims and
3 PAGA Released Claims. ""

3 **VIII. RELEASE OF PAGA RELEASED CLAIMS BY PAGA CLAIM MEMBERS:**

4 As of the Effective Date (as defined in the Settlement Agreement), all PAGA Claim Members
5 (whether or not they are Settlement Class Members or Participating Class Members) shall fully
6 release all Released Parties (defined above) of the PAGA Released Claims.

6 "PAGA Released Claims" means, all claims, causes of action, damages, wages, benefits, expenses,
7 penalties, debts, rights, demands, liabilities, obligations, attorneys' fees, costs, and any other form
8 of relief or remedy in law, equity, or whatever kind or nature, whether known or unknown,
9 suspected or unsuspected sought pursuant to the PAGA (California Labor Code section 2698, et
10 al.) that occurred at any time during the PAGA Claims Period and that are predicated upon any
11 Labor Code violations of the PAGA in the Action, including, but not limited to all possible
12 California Labor Code Claims listed in the Complaint or that could have been listed in the Action
13 based on the factual and/or legal allegations therein, including but not limited to California Labor
14 Code section 226.2, 226, 226.3, 226.7, 512, 516, 558, 1174, 1174.5, 1194 and 1194.2.

11 **IX. THE NEXT STEP — THE SETTLEMENT HEARING**

12 A hearing (the "Settlement Hearing") will be held before the United States District Court on [Date
13 of Hearing], at [Time of hearing] in Courtroom , [Address] to determine whether the proposed
14 Settlement is fair, adequate and reasonable and should be finally approved by the Court.

14 The Settlement Hearing may be rescheduled without further notice to you. Please check the Court's
15 docket in this case through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or by
16 visiting the office of the Clerk of the Court at [Address] to confirm that the date of the hearing has
17 not changed.

17 PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, KNIGHT, OR
18 KNIGHT'S ATTORNEYS WITH INQUIRIES.

19 **SO ORDERED BY THE HONORABLE _____, JUDGE OF THE DISTRICT COURT.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

1 **CLAIM FORM**

2 *Robert Martinez, et. al v. Knight Transportation, Inc., et al.*

3 United States District Court, Eastern District of California, Case No. 1:16-CV-01730-DAD-SKO

4 IF YOU ARE A CURRENT OR FORMER EMPLOYEE TO KNIGHT TRANSPORTATION,
5 INC., TO PARTICIPATE IN THE SETTLEMENT DESCRIBED IN THE ACCOMPANYING
6 NOTICE AND TO RECEIVE YOUR SHARE OF THE SETTLEMENT PROCEEDS, YOU MUST
7 SIGN, DATE AND RETURN THIS CLAIM FORM BY FIRST CLASS U.S. MAIL OR
8 EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE _____, 2022 [**60 days after
mailing**], ADDRESSED AS FOLLOWS:

9 KNIGHT TRANSPORTATION, INC. SETTLEMENT ADMINISTRATOR
10 C/O [_____]

11 **A. Instructions.**

- 12 1. If you are a member of the Settlement Class (as this term is defined in the
13 accompanying Notice Of Class Action Settlement, Settlement Hearing, And
14 Exclusion Procedures), you must date, sign and mail this Claim Form with a
15 postmark on or before _____, 2022 in order to be eligible to
16 participate in the settlement. KNIGHT supports this settlement and there will be no
17 retaliation against any Class Member who submits a Claim.
- 18 2. If you move, please send the Settlement Administrator your new address. It is your
19 responsibility to keep a current address on file with the Settlement Administrator.
20 Once the settlement has been finally approved by the court, your Settlement
21 Payment will be mailed to the address on file with the Settlement Administrator.

22 **B. Claimant Information.**

23 Name (First, Middle, Last): _____
 24 Former Names (if any): _____
 25 Residence Street Address: _____
 26 City, State and Zip Code: _____

27 **C. Service Information.**

28 According to the records of KNIGHT TRANSPORTATION, INC. (“KNIGHT”) you provided
 cargo transportation services to KNIGHT during the period, through _____, 20____ [**date of
 preliminary court approval**] (“Class Period”) for a total of _____weeks. Of those total weeks,
 _____weeks were covered by a settlement agreement between you and KNIGHT, or on KNIGHT’s
 behalf (Settlement Calendar Weeks) and the remainder are Non-Settlement Calendar Weeks.

If you do not agree with the weeks shown above, please write the number of weeks you believe you provided cargo transportation services to KNIGHT during the Class Period

1 here: _____ and check one of the following boxes:

2 [] I am enclosing information/evidence which supports my position that I provided
3 cargo transportation services to KNIGHT for more weeks than shown by KNIGHT's records.

4 [] I am **NOT** enclosing information/evidence to support my position that I provided
5 cargo transportation services to KNIGHT for more weeks than shown by KNIGHT's records.

6 **If you do not agree with the division between Settlement Calendar Weeks and Non-**
7 **Settlement Calendar Weeks, please write the division of weeks here: _____**
8 **_____ and check one of the following boxes:**

9 [] I am enclosing information/evidence which supports my position that there is a
10 different division between Settlement Calendar Weeks and Non-Settlement Calendar Weeks.

11 [] I am **NOT** enclosing information/evidence which supports my position that there is a
12 different division between Settlement Calendar Weeks and Non-Settlement Calendar Weeks.

13 **NOTE: KNIGHT's records will control unless you are able to provide information and/or**
14 **documentation which establishes that KNIGHT's records are in error. If you submit such**
15 **documentation and KNIGHT does not agree with your documentation, the court may be**
16 **asked to resolve the dispute, and the court's decision will be final.**

17 **TAXPAYER IDENTIFICATION NUMBER CERTIFICATION**

18 Enter the **last four digits** of your Social Security Number:

19 Under penalty of perjury, I certify that:

- 20 1. The last four digits of the social security number shown on this form are the last four digits of my correct
21 taxpayer identification number (or I am waiting for a number to be issued to me); **and**
- 22 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not
23 been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a
24 failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup
25 withholding, **and**
- 26 3. I am a U.S. person (including a U.S. resident alien).

27 I declare under penalty of perjury under the laws of the State of California that the last four digits
28 of my social security number provided above and other information provided by me in this Claim
Form is true and correct, and that I have carefully read and agree to the releases described in the
accompanying Notice Of Class Action Settlement and I submit to jurisdiction as stated above.

Dated: ___/___/_____

Claimant Signature