

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BNVS Transport LLC and MEIN & MEEN  
TRUCKING, INC., individually and on behalf of  
all others similarly situated,

Plaintiffs,

vs.

C&K TRUCKING, LLC,

Defendants.

Case No. 1:20-CV-04305

HON. JOHN ROBERT BLAKEY

HON. M. DAVID WEISMAN

**DATE:** October 20, 2022

**TIME:** 11:00 a.m.

**COURTROOM:** 1203

**JUDGE:** Hon. John Robert Blakey

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF RULE 23 CLASS**  
**ACTION SETTLEMENT**

## **I. INTRODUCTION**

Plaintiffs seek preliminary approval of a proposed non-reversionary, class-action settlement to resolve claims brought under the Truth in Leasing Act (TILA), 15 U.S.C. § 1601, et seq., and Illinois common law of contract and fraud, on behalf of Illinois-based owner operators of Defendant C&K Trucking, LLC. The owner-operators are small “mom and pop” companies that provide drayage transportation services for Defendant and its customers. In the underlying lawsuit, Plaintiffs claimed that Defendant often paid them and the other owner-operators less than the amounts to which they were contractually entitled. Plaintiffs also claimed that Defendant made unsubstantiated deductions and chargebacks to their pay and that Defendant did not adequately disclose its methods for determining compensation. Defendant hotly contested Plaintiffs’ allegations, contending that it paid the owner-operators in accordance with the contracts, did not mislead the owner-operators in the terms of their pay, did not make unsubstantiated deductions, and that the owner-operators did not rely on any alleged misstatements to their detriment in any event.

After motion practice on the pleadings, written discovery and depositions, and the filing of Plaintiffs’ motion for class certification, the parties agreed to attempt to mediate the case with Professor Lynn Cohn, Clinical Professor of Law and Co-director of the Center on Negotiation, Mediation, and Restorative Justice at the Northwestern School of Law. Professor Cohn held two mediation sessions on June 27, 2022 and July 29, 2022. The professional, arms-length negotiations were informed by the documents, interrogatory responses, and depositions provided by both sides, the exchange of mediation data analyzed by the parties and their experts, and the exchange of mediation briefs and argument with substantive legal and factual analysis. Representatives of the parties, including Sean McShane, President and CEO of Defendant C&K Trucking, LLC, Anna

Faford, Vice President of Strategy of Defendant C&K Trucking, and the Named Plaintiffs' owner-operators, attended both sessions. After extensive negotiations and thorough analysis of Defendant's compensation and revenue data, and with Professor Cohn's assistance, the parties were able to reach the proposed class action settlement.

As discussed below and documented in counsel's declarations submitted in support of this motion, the proposed Settlement satisfies all the criteria for settlement approval under Fed. R. Civ. P. 23, and comfortably falls within the range of reasonableness for preliminary approval. Accordingly, Plaintiffs request that the Court preliminarily approve the proposed Settlement.

## **II. KEY TERMS OF THE PROPOSED SETTLEMENT**

The key terms of the Settlement Agreement include:

- Gross Settlement Amount: The Gross Settlement Amount is **\$3,350,000.00**. It is the total sum Defendant agrees to pay in exchange for Plaintiffs' and the Settlement Class Members' releases. *See* Class Action Settlement Agreement at § 3.1, attached as Exhibit 1 to the Declaration of Joshua Konecky in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Konecky Decl.").
- No Reversion: All settlement funds will be paid out, and none will revert to Defendant. *Id.*
- Scope of Class Release: The claims being released for the Participating Class Members are limited to those claims arising during the applicable statutes of limitations that were pleaded or could have been pleaded based on the facts alleged in Plaintiffs' original Complaint and/or First Amended Complaint. *Id.* at §§ 1.14, 6.2.
- Class Definition: The Class is defined in the Settlement Agreement to comprise all current or former owner-operators based in Illinois who signed one of Defendant C&K Trucking LLC's standardized Independent Contractor Agreements and provided services pursuant to that

agreement(s) at any time from July 22, 2010 to July 29, 2022. *Id.* at § 1.4. This proposed Class for settlement purposes is materially the same as the class Plaintiffs proposed in their Motion for Class Certification, which was pending at the time the parties reached their Settlement. *See* ECF 62 (Notice of Motion for Class Certification, filed May 20, 2022).

- Class Period: The time-period covered by the Class definition and Class Release tracks the applicable statutes of limitations for class claims asserted in this case. There is a “TILA Class Period” that covers the period from July 22, 2016 to July 29, 2022, to comport with the 4-year statute of limitations under the TILA. *See* Settlement at § 1.13; *Owner-Operator Indep. Drivers Ass’n v. Mayflower Transit, LLC*, 615 F.3d 790, 792 (7th Cir. 2010). There also is an “Illinois Class Period” that covers July 22, 2010 to July 29, 2022, to comport with the 10-year statute of limitations for the alleged Illinois contract claims. *See* Settlement at § 1.12; 735 ILCS 5/13-206; Konecky Decl. at ¶ 21. Additionally, the end point for both Class Periods is July 29, 2022, the date the parties reached the Settlement and signed the Memorandum of Understanding. Settlement at §§ 1.11-1.13; Konecky Decl. at ¶ 21.
- Net Settlement Amount: The Net Settlement Amount means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Administration Expenses Payment, and the Reserve Fund. *See* Settlement at § 1.27.
- Direct Payments to Settlement Class Members / No Claim Forms: Settlement Class Members who do not opt out of the Settlement will not need to submit claims to receive their pro-rata settlement payment. Rather, Individual Settlement Payments (i.e., settlement checks) will be automatically sent to all class members for whom a valid address can be located either through Defendant’s records, and/or by the Settlement Administrator through the National Change of

Address database (NCOA). *Id.* at § 4.4; proposed Class Notice, Exh. A to Settlement Agreement and Exh. 2 to Konecky Decl. (“Class Notice”).

- Distribution Formula: Each Settlement Class Member’s individual share of the Settlement will be proportional to the number of weeks the class member worked for Defendant during the applicable time period, in comparison to the aggregate number of weeks all Settlement Class Members combined worked for Defendant during the same period. Settlement Agreement at § 3.2.4(a), (c); Konecky Decl. at ¶ 24. Additionally, the workweeks within the TILA Class Period will receive twice the weight as the workweeks occurring within the broader Class Period, but before the TILA Class Period, § 3.24(b); Konecky Decl. at ¶ 25. As discussed below, the parties allocated the workweeks in this fashion to account for the relative strength and value of the TILA claims as opposed to the Illinois common law claims. The exact formula is set forth in Section 3.2.4 of the Settlement Agreement as well as Section 4 of the proposed Class Notice.
- Tax Allocation: Each participating class member’s individual class member payment will be reported on IRS 1099 forms. Settlement Agreement at § 3.2.4.1.
- Service Award: The Settlement provides that Plaintiffs may seek service payments to the Class Representatives (Ms. Stephens, Mr. Shurn, and Mr. Muhammad), not to exceed \$20,000.00 per person (subject to Court approval), which Defendants will not oppose. Settlement Agreement at §§ 1.15, 1.16, 3.2.1; Konecky Decl. at ¶ 46.
- Attorneys’ Fees and Costs: Plaintiff’s attorneys’ fees and costs are included in the gross settlement amount of \$3,350,000.00. The Agreement provides that Plaintiffs may seek attorneys’ fees totaling no more than one-third of the gross settlement amount. *See* Settlement at § 3.2.2. This is in line with common practice in this Circuit of using a percentage method and is within the “‘typical’ fee ‘between 33 and 40 percent[.]’” *T.K. v. Bytedance Tech. Co.*,

Ltd., 2022 U.S. Dist. LEXIS 65322, at \* 66 (N.D. Ill. Mar. 25, 2022) (Blakey J.) (quoting *Dobbs v. DePuy Orthopaedics, Inc.*, 885 F.3d 455, 458 (7th Cir. 2018)); Konecky Decl. at ¶¶ 47-48. The Agreement further provides for reimbursement of Plaintiffs' counsel's documented out of pocket costs, *see* Settlement at § 3.2.2, currently estimated to be approximately \$40,056. *See* Konecky Decl. at ¶ 49. Plaintiffs will make a separate motion for attorneys' fees and costs under Rule 23(h), on a date to be set by the Court. Konecky Decl. at ¶ 50.

- Class Notice: The proposed Class Notice sets forth in plain terms, a statement of case, the terms of Settlement, the attorneys' fees, costs, and the service award being sought, an explanation of how the settlement allocations are calculated, each Class Member's own credited workweeks, total Class Member workweeks, as well as the Class Member's estimated settlement award. *See* Class Notice at p. 1 and §§ 1, 3, 4. Each Class Notice will be individually tailored to show the estimated dollar amount of the Individual Settlement Payment for that Class Member. *See* Settlement at § 8.3.2; Class Notice at p. 1. The Class Notice will be sent to all identified Class Members in both English and Spanish first-class mail. *See* Settlement at §§ 1.10; 8.3.2. Defendant will provide the Settlement Administrator with the last known contact information of the Class Members and the Administrator will conduct a National Change of Address search before mailing the Class Notices. *Id.* at §§ 4.2, 8.3.2. The Settlement Administrator will also remail Class Notices to any Class Members whose Class Notices are returned with a forwarding address and, for any whose Class Notices are returned without a forwarding address, the Settlement Administrator will perform address searches (skip tracing) and remail to any new addresses found. *Id.* at § 8.3.3. The Settlement Administrator also will set up a toll-free number and a website posting the Class Notice and other important case documents. *See* Settlement at § 8.7.1.

- Right to Object. Participating Class Members will have 60 days following the date the Settlement Administrator mails the Class Notice to submit written objections. *See* Settlement at §§ 1.38, 8.6. Participating Class Members may also object by appearing at the Final Approval Hearing at the Court’s discretion. *Id.* at § 8.6.3. The proposed Class Notice explains the objection procedures to the Class. *See* Class Notice at § 7.
- Right to Opt Out. Participating Class Members will have 60 days following the date the Settlement Administrator mails the Class Notice to opt out of the Settlement. *See* Settlement Agreement, §§ 1.38, 8.4. The proposed Class Notice explains the objection procedures to the Class. *See* Class Notice at § 6.
- Right to Challenge Defendant’s Workweek Records. Class Members will have the opportunity, should they disagree with Defendant’s records regarding the workweek information stated on their Class Notice, to provide documentation and/or an explanation to show contrary workweeks. If there is a dispute, counsel for the parties will attempt to resolve it, and if such efforts do not result in an agreement as to the proper workweek number, the Court will determine the proper number. Settlement Agreement at §§ 8.5, 8.7.4.

### **III. ARGUMENT**

#### **A. Overview of the class action settlement process**

“Federal Rule of Civil Procedure 23(e) requires court approval of any settlement that effects the dismissal of a class action.” *In re Tiktok, Inc. Consumer Privacy Litig.*, 565 F. Supp. 3d 1076, 1083 (N.D. Ill. 2021). “Federal courts naturally favor the settlement of class action litigation.” *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996).

The court approval process comprises three principal steps: (1) a preliminary approval hearing, at which the court considers whether the proposed settlement is within the range of

reasonableness possibly meriting final approval; (2) dissemination of notice of the proposed settlement to class members for comment; and (3) a formal “fairness hearing,” or final approval hearing, at which the Court decides whether the proposed settlement should be approved as fair, adequate, and reasonable to the class. *See* Manual for Complex Litigation (Fourth) §§ 21.632-34 (2004). This procedure safeguards Class Members’ procedural due process rights and enables the Court to fulfill its role as the guardian of class interests. *See* Newberg on Class Actions, § 11.22, *et seq.* (4th ed. 2002).

**B. The Settlement should be preliminarily approved**

**1. The standards for preliminary approval**

At this preliminary approval stage, the Court “undertake[s] three essential inquiries.” *In re Tiktok, Inc.*, 565 F. Supp. 3d at 1083. The first is “whether [the Court] ‘will likely be able’ to certify the putative class for purposes of judgment on the proposed settlement.” *Id.* The second is “whether the proposed settlement is ‘within the range of possible approval’ with regard to the criteria set forth in Rule 23(e)(2).” *Id.* The “final [inquiry] is whether the proposed notice plan provides ‘the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.’” *Id.* at 1091.

**C. The Settlement Class meets the criteria for certification under FRCP 23**

**1. The scope of the Settlement Class is appropriate**

The Settlement Class comprises all current or former owner-operators based in Illinois who signed one of Defendant’s standardized Independent Contractor Agreements and provided services pursuant to that agreement(s) at any time from July 22, 2010, to July 29, 2022. In other words, it is localized to the state out of which Plaintiffs were based. This proposed Class for settlement purposes is materially the same as the class Plaintiffs proposed in their Motion for Class



Certification, which was pending at the time the parties reached their Settlement. *See* ECF 62 (Notice of Motion for Class Certification, filed May 20, 2022). Moreover, Plaintiffs tailored their class definition in the Motion for Class Certification and again in the Settlement Agreement to just those owner operators operating out of Illinois, further supporting manageability.

**2. The elements of Rule 23(a) are satisfied**

**a. *Rule 23(a)(1): Numerosity***

The first requirement of Rule 23(a) is that the class be so numerous that joinder of all members would be “impracticable.” *See* Fed. R. Civ. P. 23(a)(1). Here, Defendant estimates from a review of its records that there are approximately 1,010 Class Members, which satisfies numerosity. *See, e.g., Mulvania v. Rock Island Cnty. Sheriff*, 850 F.3d 849, 859-60 (7th Cir. 2017).

**b. *Rule 23(a)(2): Commonality***

Rule 23(a) also requires “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “Courts give Rule 23(a)(2) a ‘highly permissive reading,’ requiring plaintiffs to show only that there is more than one issue of law or fact in common.” *Boyd v. Godinez*, 2013 U.S. Dist. LEXIS 131571, at \*7 (N.D. Ill. Sept. 16, 2013). That a defendant “ha[s] engaged in standardized conduct towards members of the proposed class” is sufficient, even where there may be “[s]ome factual variation in the details of individual claims[.]” *Id.*

Here, the Named Plaintiffs’ claims and those of the other Class Members arise from the same or similar standardized conduct. *See* P’s Class Cert. Mot. (ECF 62-1) at §§ II-D, III-A.2. Plaintiff’s Motion for Class Certification sets forth numerous common questions apt to drive resolution of this case, including whether C&K’s standard contract violates the Truth in Leasing Act Regulations pertaining to deductions and charge-backs. *See id*; *see also See In re Tiktok, Inc.*,

565 F. Supp. 3d at 1084 (“[T]here are abundant questions of law and fact arising from the ‘nucleus of operative fact’ common to” the class).

**c. Rule 23(a)(3): Typicality**

“To satisfy Rule 23(a)(3)’s typicality requirement, [a p]laintiff must show enough congruence between her claims and the unnamed class members’ claims to warrant allowing her to litigate on behalf of the group.” *Magpayo v. Advocate Health & Hosps. Corp.*, 2018 U.S. Dist. LEXIS 26282, at \*32 (N.D. Ill. Feb. 20, 2018) (Blakey, J.). Typicality “[g]enerally” exists where claims “‘arise[] from the same event or practice or course of conduct that gives rise to the claims of the other class members,’ and asserts the same legal theory.” *Id.*

The Named Plaintiffs here satisfy typicality. As Plaintiffs discussed in their motion for class certification, Defendant admitted to underpaying Illinois-based owner-operators, including them. *See* ECF 62-1 at § III-A.3. As Plaintiffs also discussed in their motion for class certification, the Named Plaintiffs signed the same standard Contract as the rest of the putative class and were subject to the same allegedly unlawful pay policies and practices. *See* ECF 62-1 at § III-A.3.

**d. Rule 23(a)(4): Adequacy of Representation**

“To satisfy the adequacy of representation requirement, [p]laintiffs must show that they will fairly and adequately protect the interests of the class.” *Beley v. City of Chi.*, 2015 U.S. Dist. LEXIS 163919, at \* 14 (N.D. Ill. Dec. 7, 2015). The adequacy analysis requires a court to “determine whether [p]laintiffs have: (1) antagonistic or conflicting claims with other members of the class; (2) a sufficient interest in the outcome of the case to ensure vigorous advocacy; and (3) counsel who is competent, qualified, experienced and able to vigorously conduct the litigation.” *Id.* at \*14-15.

Here, the Named Plaintiffs’ “interests are aligned with, not antagonistic to, those of the absent...[c]lass members” because they suffered the same or similar alleged harms as the rest of the class and do not have conflicts. *See In re Tiktok, Inc.*, 565 F. Supp. 3d at 1085; *see also* ECF 62-1 at § III-A.4. Moreover, they have vigorously defended the class interests. *See id.*; Konecky Decl. at ¶¶ 43-46. Plaintiffs’ counsel have also advocated vigorously on behalf of the class and are experienced in prosecuting complex individual and class actions, including those involving pay disputes in the trucking industry. *See* ECF 62-1 at § III.A-4; Konecky Decl. at ¶¶ 4-18, 38-42; Vucko Decl. at ¶¶ 1-11.

**3. The elements of Rule 23(b)(3) are satisfied**

“[U]nder Rule 23(b)(3), the Court also must consider whether it is likely to conclude that: ‘the questions of law or fact common to the class members predominate over any questions affecting only individual members’; and ‘a class action is superior over other available methods for fairly and efficiently adjudicating the controversy.’” *In re Tiktok, Inc.*, 565 F. Supp. 3d at 1086. “Factors particularly pertinent to these issues” in the context of a motion for preliminary approval “include: (A) the class members’ interests in individually controlling the prosecution...of separate actions’ and (B) the extent and nature of any litigation concerning the controversy already begun.” *Id.*

**a. *Common questions predominate***

Common questions predominate here because those at issue involve the application of the same statutory, regulatory, and contract language to the entire class. They also involve common evidence – including standard business contracts, written representations, settlement sheets, and related business records, as well as C&K’s own admissions – that apply class-wide. *See* ECF 62-1 at § III-B.1. The class is also subject to common defenses to their claims as asserted by the

Defendant. These common questions thus involve “generalized proof” and “are more substantial than any issues that may be subject only to individualized proof.” *In re Tiktok, Inc.*, 565 F. Supp. 3d at 1086; see also ECF 62-1 at § III-B.1.

**b. A class action is superior**

Rule 23(b)(3)’s final requirement is “that the class action be superior to other methods of adjudication.” This requirement is satisfied because there is no indication that Class Members seek to individually control their cases, that individual litigation is already pending in other forums, or that this particular forum is undesirable for any reason. Fed. R. Civ. P. 23(b)(3)(A)-(D). Accordingly, certification of the Settlement Class is superior to any other method of resolving this matter, since it “would achieve economies of time, effort, and expense, and promote...uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results.” See *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997).

**D. The proposed settlement is within the range of possible approval.**

In this Circuit, determining whether a settlement is within the range of possible approval at this stage typically entails “a more summary version of the final fairness inquiry[.]” *In re Tiktok, Inc.*, 565 F. Supp. 3d at 1083. To conduct the fairness inquiry, courts in this Circuit “consider...‘(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.’” *Id.* at 1083-84. While the first factor is “most important...courts do not focus on individual components of the settlements, but rather view them in their entirety in evaluating their fairness.” *Id.* at 1084.

**1. The settlement is the product of vigorous, arm's-length negotiations**

As a court in this District recently noted, “several circuits...apply a presumption that a class action settlement reached through ‘arm’s-length negotiations between experienced, capable counsel after meaningful discovery’ is fair, reasonable, and adequate.” *Id.* at 1088 n.5.

The parties reached the proposed settlement before the Court after significant litigation, including motions to dismiss and the filing of Plaintiffs’ motion for class certification; extensive formal and informal discovery, including depositions, interrogatories, document production, and pay data; two mediation sessions with Professor Lynn Cohn of Northwestern Law’s Center on Negotiation and Mediation; the exchange of substantive argument and analysis in connection with the mediation sessions; and meet-and-confer between the mediation sessions. *See Konecky Decl.* at ¶¶ 8-18, 38-42. Additionally, the negotiations were informed, among other things, by damages analyses conducted by experts, including Plaintiffs’ forensic accountant, who carefully analyzed Defendants’ revenue and compensation data. *Id.* Moreover, representatives of the Named Plaintiffs, as well as Defendant’s CEO and V.P. of Strategy, personally participated in the mediation efforts. *Id.* at ¶ 17.

**2. The settlement presents a meaningful benefit to the class and has no obvious deficiencies**

“[T]he most important factor relevant to the fairness of a class action settlement is...the strength of [a] plaintiff’s case on the merits balance against the amount offered in the settlement.” *Kaufman v. Am. Express Travel Related Servs., Co.*, 877 F.3d 276, 284 (7th Cir. 2017). Analyzing this factor typically entails an examination of litigation risks and potential outcomes, which “need not always be quantified, particularly where there are other reliable indicators that the settlement reasonably reflects the merits of the case.” *Id.*; *see also In re Tiktok, Inc.*, 565 F. Supp. 3d at 1087.

The Settlement is based on an evaluation of revenue and compensation data by counsel, the parties, and a forensic accountant who consulted with Plaintiffs' counsel. The parties conducted an arms-length negotiation on the potential value of Plaintiffs' claims in light of what the data shows, as moderated by a vetting of the strengths and risks of prevailing on the claims and the delays of further litigation. *See Konecky Decl.* at ¶¶ 4-18, 38-42.

While based on evaluation of the actual revenue and delivery data to estimate the actual alleged shortfalls, it is also noteworthy that the Settlement provides a beneficial result for the Class when viewed in terms of a per Class Member recovery as well. Even after the maximum attorneys' fees that Plaintiffs may seek under the Settlement Agreement, counsel's out-of-pocket costs (currently estimated to be \$40,056), the highest service award permitted under the Settlement Agreement, and the estimated costs of settlement administration, there will be approximately \$2,078,968 to distribute to the approximately 1,010 members of the potential Settlement Class. *Konecky Decl.* at ¶ 22. This works out to an average share of approximately \$2,058 per person. As noted, Settlement Class Members with longer tenures will receive larger shares reflecting their longer terms of service. This provides a meaningful benefit, especially considering the hotly contested issues, strengths, risks and delays of further litigation.

Additionally, the Settlement provides each Settlement Class Member the opportunity, should they disagree with Defendants' records regarding their number of Workweeks, to dispute the records by providing documentation and/or an explanation to show a different number of Workweeks. Settlement Agreement at § 8.5. The Settlement provides that counsel for the parties will attempt to resolve any Workweek disputes, and if those efforts fail, the Court will decide the outstanding issue. *Id.* Settlement Class Members will also be able to submit written objections to the Settlement and/or appear at the Final Approval/Fairness Hearing to have their objections heard

by the Court. *Id.* at § 8.6.2. Alternatively, Class Members will have the opportunity to opt-out of the Settlement should they so desire for any reason. *Id.* at § 8.6.3. These procedural safeguards are explained in the Notice of Class Action Settlement to the Class (attached as Exhibit A to the Settlement Agreement and separately as the Exhibit 2 to Konecky Decl.).

**3. The distribution formula is reasonable**

Settlement Class Members' shares will increase or decrease proportionally based on the number of Workweeks they have in comparison to the Workweeks of all the Settlement Class Members combined. Konecky Decl. at ¶ 24. Thus, the Settlement Class Members' respective shares will increase or decrease proportionally based on the amount of time worked during the liability period. This is a reasonable proxy for the allocating the settlement fund amongst the Settlement Class Members. *Id.*

Additionally, the Workweeks within the TILA Class Period will be weighted twice those occurring within the broader Class Period, but before the TILA Class Period. *Id.* at ¶ 25. This reflects the assessment, after thorough vetting, of the relative strengths of the TILA and Illinois common law claims. The TILA claims, unlike the common law claims, encompass claims related to deductions from owner-operators' pay (rather than just claims regarding underpayments). The common law fraud claim also presents the challenge of proving reliance on a class basis, while Plaintiffs submit that the TILA claim does not require a showing of reliance (though the parties disputed this position – reflecting one of the litigation risks at issue). *Id.* at ¶ 26.

**E. The Court should order dissemination of the proposed class notice**

**1. The Settlement Agreement provides for the best method of notice practicable under the circumstances**

Rule 23(e) requires that before finally approving a class settlement, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R.

Civ. P. 23(e). Where the class is certified pursuant to Rule 23(b)(3), the notice must be the “best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

The parties have agreed on a notice plan that would provide Class Members with individual notice by first class mail through a careful process that will provide them with extensive information designed to protect their rights. *See* Settlement at §§ 1.10, 4.41, 8.3.2, 8.7.1; *see also* Section II, *supra*. Plaintiff requests that the Court approve this method of notice as the best practicable under the circumstances. *See Kaufman*, 877 F.3d at 284. Plaintiff further requests that the Court appoint JND Legal Administration to serve as Settlement Administrator. JND’s qualifications and understanding of the settlement notice and administration process are described in the Declaration of Jennifer M. Keough, filed herewith. Keough (Admin) Decl. at ¶¶ 1-14.

The proposed form of notice also complies with Fed. R. Civ. P. 23(c)(2)(B). *See* Notice at p.1, §§ 1, 3, 6, 8; Section II, *supra*. Plaintiffs request that the Court approve the form of notice.

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully requests that the Court grant their Motion for Preliminary Approval of Class Action Settlement and set a schedule for Final Approval.

DATED: September 28, 2022

Respectfully submitted,

**VUCKO LAW LLP**

By: /s/ Stacey Vucko  
Stacey Vucko

**SCHNEIDER WALLACE  
COTTRELL KONECKY LLP**

By: /s/ Joshua Konecky  
Joshua Konecky  
Sarah McCracken

Attorneys for Plaintiffs



**CERTIFICATE OF SERVICE**

I hereby certify that September 28, 2022, I electronically filed the foregoing document with the Clerk of Court using the Court's CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Joshua Konecky  
Joshua Konecky

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HON. JOHN ROBERT BLAKEY

HON. M. DAVID WEISMAN

**DATE:** October 20, 2022

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**COURTROOM:** 1203

**JUDGE:** Hon. John Robert Blakey

**DECLARATION OF JOSHUA G. KONECKY IN SUPPORT OF**  
**MOTION FOR PRELIMINARY APPROVAL OF RULE 23 CLASS ACTION**  
**SETTLEMENT**

I, Joshua G. Konecky, declare as follows:

1. I am an attorney at Schneider Wallace Konecky LLP, and one of the attorneys of record for Plaintiffs in the above-captioned case. I am familiar with the file, the documents, and the history related to this case. The following statements are based on my personal knowledge and review of the files. If called upon to do so, I could and would testify competently thereto.

2. I am submitting this Declaration in support of Plaintiffs' motion for preliminary approval of the proposed class action settlement and conditional certification of a settlement class under Federal Rule of Civil Procedure 23. A true and correct copy of the "Class Action Settlement Agreement" ("Agreement") is attached to this Declaration as **Exhibit 1**. The proposed Notice of Settlement, subject to court approval and formatting by the Settlement Administrator, is attached as Exhibit A to the Agreement. A true and correct copy of the Notice is also attached separately to this Declaration as **Exhibit 2** for the Court's convenience.

3. I am a member of the Bar of the State of California and have been admitted to various federal District Courts. On July 28, 2020, this Court granted me the opportunity to appear *pro hac vice* in this case and granted motions for attorneys Sarah McCracken and James Bloom, also of my firm, to appear *pro hac vice* in this case. *See* ECF 8. Since the beginning of this case, we have been working together with our co-counsel, Stacey Vucko, who has been a member of the Northern District of Illinois trial bar since 2013. Ms. Vucko has filed a separate declaration in support of the proposed class action settlement and conditional certification of a settlement class under Federal Rule of Civil Procedure 23.

#### **EXPERIENCE OF COUNSEL**

4. I have been co-counsel for Plaintiffs and the proposed plaintiff class throughout this case. I am a partner at Schneider Wallace Cottrell Konecky LLP, which is a leading private plaintiff firm in employment class actions as well as various other class action cases. More details on the work, experience and accomplishments of the firm can be found at [www.schneiderwallace.com](http://www.schneiderwallace.com).

5. I personally have represented plaintiffs in civil rights, consumer and employment class actions since I began practicing law in 1997. For the first five years, my practice focused

exclusively on disability access class actions. Since approximately 2002, I have been representing plaintiffs in employment class actions, with a focus on wage and hour cases. I have been named by the Daily Journal as a top labor and employment attorney in California and I have been on the Northern California Super Lawyers list every year since 2011.

6. I have been lead counsel and/or co-lead counsel in numerous class actions. In this capacity, have successfully litigated multiple contested class certification motions, successfully brought and defended against various summary judgment motions in class action cases, and have successfully tried several class actions in favor of the plaintiff class. I also have negotiated numerous class action settlements through mediation. I believe that my experience litigating, trying and mediating class action cases over the years has helped me to understand both how to obtain the necessary information to effectively negotiate a class action settlement and how to effectively evaluate the strengths and risks of a case during mediation, when it comes time to deciding whether to accept a settlement offer or mediator's proposal. A representative list of cases appears on my curriculum vitae, which is attached as **Exhibit 3** to this Declaration.

7. As I mentioned above, my firm is also a leading plaintiff and employment class action firm. Our partners and attorneys have litigated major wage and hour class actions, have won several prestigious awards, and sit on important boards and committees in the legal community. The Recorder has listed our firm as one of the "top 10 go-to plaintiffs' employment firms in Northern California."

### **CASE BACKGROUND AND PROCEDURAL HISTORY**

8. In about March or April 2020, our firm began working with our co-counsel, Stacey Vucko of Vucko Law LLP. We began working with Ms. Vucko after she was contacted by Valinda Stephens, Bernard Shurn, and Damien Muhammad, who had contracted with Defendant C&K Trucking, LLC ("Defendant" or "C&K") to provide intermodal drayage services to its customers. Ms. Stephens and Messrs. Shurn and Muhammad had contacted Ms. Vucko to complain about various issues regarding the way in which C&K was calculating their pay. We found their

complaints to be compelling.

9. On July 22, 2020, we filed a class action complaint in this District, identifying Ms. Stephens and Mr. Shurn, d/b/a BNVS Transport LLC and Damien Muhammad, d/b/a Mein & Meen Trucking as the Named Plaintiffs. ECF 1. As discussed in further detail below, in the approximately two years since this case's inception, the parties have litigated a motion to dismiss, propounded and responded to substantial discovery, appeared for depositions, and vetted the various legal and factual issues raised by the claims and defenses. We also fully briefed and filed a motion for class certification, which was pending when the parties negotiated and reached the settlement now being presented to the Court here.

10. The parties also engaged in two, arms-length mediation sessions facilitated by Professor Lynn Cohn, Clinical Professor of Law and Co-Director of the Center on Negotiation, Mediation, and Restorative Justice at the Northwestern School of Law. Before and between these sessions, we also had substantive negotiations and discussions regarding the underlying settlement data. We retained a forensic accountant to assist us in analyzing the data and he directly participated in the discussions between sessions well. The goal was to best ensure that the data was sufficiently complete and reliable, and that the parties understood each other's interpretations and inferences, such that we could have an informed negotiation. We put significant effort into this process and I believe the parties met this goal.

11. I now provide a summary of the procedural history before the mediation process.

12. On September 14, 2020, Defendant filed a motion to dismiss the Complaint based primarily upon the argument that Ms. Stephens and Messrs. Shurn and Muhammad were not the proper plaintiffs because it they signed the contracts with Defendant on behalf of their companies, rather than as individuals. ECF 19. Without conceding the legitimacy of Defendant's arguments and to efficiently advance the litigation to the heart of the dispute, we filed a First Amended Complaint on October 5, 2020, which substituted BNVS Transport LLC and Mein & Meen Trucking, Inc. as the Named Plaintiffs. ECF 24.

13. On October 26, 2020, Defendant filed a motion to dismiss the First Amended Complaint based upon standing arguments as well as the contention that Plaintiffs' allegations were insufficiently detailed. ECF 26. We filed Plaintiffs' opposition on November 23, 2020. ECF 34. Defendant filed its reply on December 7, 2020. ECF 37. Plaintiffs prevailed on the motion and the Court ordered Defendant to file an Answer. ECF 39. Defendant therefore filed its Answer to the First Amended Complaint on June 4, 2021. ECF 40.

14. After resolving the pleadings, the parties propounded and responded to requests for production of documents and interrogatories. Defendant searched for and produced over 20,000 pages of documents, including (after meet and confer) a class list that enabled us to contact and interview putative class members. Plaintiffs searched for and produced approximately 1,000 pages of documents. The parties also provided substantive answers (in addition to objections) to the interrogatories served on each other.

15. On January 12, 2022, I took the deposition of Sean McShane, the President and CEO of Defendant, who also appeared as a designee witness pursuant to Federal Rule of Civil Procedure 30(b)(6). Defendant's counsel took the deposition of Valinda Stephens in her individual capacity and as a Rule 30(b)(6) designee witness of BNVS Transport LLC on February 11, 2022, the deposition of Bernard Shurn on February 24, 2022, and the deposition of Damien Muhammad in his individual capacity and as a Rule 30(b)(6) designee witness of Plaintiff Mein & Meen Trucking, Inc., on March 22, 2022.

16. On May 20, 2022, we filed Plaintiffs' motion for class certification, which was supported by excerpts from the foregoing depositions, documents and interrogatory responses, declarations from putative class members, and a memorandum of points and authorities. ECF 62.

17. After the foregoing discovery and depositions, and after we filed Plaintiffs' motion for class certification, we engaged in extensive, arms-length negotiations facilitated by Professor Lynn Cohn. As indicated above, Professor Cohn is the Director of the Center on Negotiation and Mediation at the Northwestern School of Law, and a very accomplished mediator. The

negotiations were informed by documents, interrogatory responses, and depositions provided by both sides, as well as the exchange of mediation data and information (including revenue and settlement data produced by Defendant), the exchange of mediation briefs and argument with substantive legal and factual analysis, two mediation sessions conducted by Zoom on June 27 and July 29, 2022, and discussions between counsel and Plaintiff's forensic accounting expert between the mediation sessions. Both mediation sessions were attended by representatives of the parties, including Sean McShane, President and CEO of Defendant C&K Trucking, LLC, Anna Faford, V.P. of Strategy of Defendant, Valinda Stephens and Bernard Shurn, owner-operators of Plaintiff BNVS Transport LLC, and Damien Muhammad, owner-operator of Plaintiff Mein & Meen Trucking, Inc. With Ms. Cohn's assistance, we reached an agreement on the material terms of the Settlement at the end of the second session on July 29, 2022, and signed a Memorandum of Understanding to memorialize the Settlement. Since then, the parties and counsel have worked to draft the long-form Settlement Agreement and proposed Class Notice.

18. The Settlement is grounded in an evaluation of revenue and compensation data maintained by Defendant that pertains to the proposed Settlement Class. Because the owner operator agreements set forth a compensation schedule for the owner-operators that was tied to revenue received by Defendant, assessing and comparing the revenue and compensation data formed the basis for a meaningful, informed and arms-length settlement process. Using this foundation, the parties were able to vet and exchange legal and practical arguments based on the contract language and applicable law as to whether payments were owed or not. The parties hotly contested the way in which the contract language and law might apply, among other things. Still, the parties were able to conduct an arms-length negotiation on the potential (and disputed) value of Plaintiffs' claims in light of what the data may show, as moderated by a vetting of the strengths and risks of prevailing on the claims and the delays of further litigation.

#### **VALUE AND TERMS OF THE SETTLEMENT AGREEMENT**

19. There are an estimated 1,010 Class Members who contracted with C&K between July 22,

2010 and July 29, 2022.

20. The Class comprises all current or former owner-operators based in Illinois who signed on of Defendant C&K Trucking LLC's standardized Independent Contractor Agreements and provided services pursuant to that agreement(s) at any time from July 22, 2010, to July 29, 2022.

21. The overall Class Period in this action is July 22, 2010 to July 29, 2022. However, the Agreement accounts for two liability periods within this time that correspond to the statutes of limitations for the Truth in Leasing Act ("TILA") and Illinois contract claims plead in this action: the TILA Class Period (July 22, 2016 to July 29, 2022) and the Illinois Class Period (July 22, 2010 to July 29, 2022). The statute of limitations for common law fraud claims in Illinois is five years, but Plaintiff pleaded a single Illinois class using the longer class period for simplicity. The end point for both Class Periods is the date the parties reached the Settlement and signed the Memorandum of Understanding.

22. The proposed settlement is for a non-reversionary gross settlement fund of \$3,350,000.00. We estimate that the amount that will be made available for payments to class members will be approximately \$2,078,968.33 assuming the following amounts are subtracted: (1) the fees and costs of the third-party administrator charged with administering the settlement (estimated to be approximately \$54,309); (2) any service award approved by the Court for Ms. Stephens and Messrs. Shurn and Muhammad (up to a maxim of \$20,000 each, or \$60,000 total); and (3) any attorneys' fees and costs approved by the Court (Plaintiffs will seek no more than one-third of the gross settlement amount in fees, or \$1,116,666.00, plus out-of-pocket costs currently estimated to be \$40,056).

23. The individual settlement award for each Participating Class Member will be greater or smaller than the average depending upon two objective factors that are set forth in the distribution formula at Section 3.2.4 of the proposed settlement.

24. The first factor is the number of weeks the class member worked for Defendant during the Class Period (July 22, 2010 to July 29, 2022). As shown in the distribution formula, each



Settlement Class Member's share will increase or decrease proportionally based on the number of workweeks he or she has in comparison to the workweeks of all the Settlement Class Members combined.

25. The second factor for the distribution formula is that the workweeks within the TILA Class Period will be weighted two times the workweeks occurring within the broader Class Period, but before the TILA Class Period.

26. This formula reflects our assessment, after thorough consideration, of the relative strengths of the TILA and Illinois common law claims. For example, the TILA claims, unlike the common law claims, encompass claims related to deductions from owner-operators' pay (rather than just claims regarding underpayments for work performed). Additionally, the common law fraud claim may present the challenge of proving reliance on a class basis, while our analysis is that the TILA claim does not require a showing of reliance (though the parties may dispute this – reflecting one of the litigation risks at issue).

27. The distribution formula described above is objective and straightforward to administer. In addition, the workweeks to input into the formula for each Settlement Class Member will come directly from Defendant's records. Moreover, as explained in the proposed Settlement Agreement and Class Notice, attached as Exhibit A to the Agreement, Class Members will receive notice of the number of workweeks credited to them and will have an opportunity to challenge Defendant's records if they do not believe the workweeks shown to be accurate.

28. We estimate that the average Settlement Share will be approximately \$2,058 per Settlement Class Member, although the amount will increase or decrease depending upon the Settlement Class Member's relative workweeks in the Class Period and when in the Class Period those workweeks occurred.

29. Given the strengths of the claims, the risks of litigation, and Defendant's potential exposure, we believe that the proposed settlement provides a strong result for the Class, as further discussed below.

30. In addition, Settlement Class Members will have a release that is limited to those claims arising from July 22, 2010 to July 29, 2022, that were pleaded or could have been pleaded based on the facts alleged in Plaintiffs' original Complaint and/or First Amended Complaint filed in this action. The Class Release is set forth in Sections 1.14 and 6.2 of the Agreement.

31. The proposed settlement also provides at Section 3.1 that there will be no reversion of any of the \$3,350,000.00 gross settlement fund to Defendant. To the extent there is any residual, the parties have agreed that it will be donated to the designated *cy pres* beneficiary, Misericordia, as reflected in Section 4.4.4 of the Agreement. An overview of Misericordia's mission is attached hereto as **Exhibit 4**.

32. Given the nature of the dispute, the disputed factual and legal issues, and the risks of continued litigation, as further discussed below, we believe that the settlement terms are fair and reasonable, and provide a strong result for the class.

#### **NOTICE OF PROPOSED SETTLEMENT**

33. Class Members will be notified of the settlement by first class mail. The parties have agreed to request that the Court appoint JND Legal Administration ("JND") to serve as the Settlement Administrator. JND is a well-qualified Settlement Administrator, as demonstrated by the separate declaration being submitted by its representative, Jennifer M. Keough.

34. The Settlement Administrator will undertake its best efforts to ensure that the notice is sent to the most current mailing address of each Class Member. The notice, objection, opt-out and dispute procedures are set forth in Sections 8.3-8.6 of the Agreement. Defendant will provide the Settlement Administrator with a list of all Class Members and their most recently known mailing addresses and telephone numbers. The Settlement Administrator will then conduct a national change of address search before mailing, followed by re-mailing any Class Notice returned as undeliverable with a forwarding address and additional research (skip tracing) to obtain updated addresses for those Class Notices returned as undeliverable without a forwarding address. As discussed in Ms. Keough's declaration, JND estimates the administration expenses for the

settlement will be approximately \$54,309.

35. The proposed Notice of Settlement is attached as Exhibit A to the Agreement. It provides, among other things, a description of the case; the total settlement amount and how it will be allocated (including information about Plaintiffs' motion for attorneys' fees and costs and how to review it); the procedures for opting out of the settlement, objecting to the settlement, and disputing settlement calculations; and an explanation of how the settlement allocations among Class Members will be calculated.

36. Each settlement notice also will be individually tailored to provide the Class Member an estimate of the amount of his or her individual settlement award, as well as his or her credited workweeks and the distribution formula from which the award is calculated. Any Settlement Class Member who does not agree with Defendant's records as to their workweeks will be able to contest them using the process described in Section 8.5 of the Agreement.

37. Additionally, Class Members will have sixty days to decide whether to opt out of the Agreement or object to any terms of the Agreement, including Plaintiffs' application for attorneys' fees and costs, and the proposed service awards. The objection and opt-out procedures are contained in Sections 8.4 and 8.6 of the Agreement and explained in Sections 6 and 7 of the proposed Notice of Settlement.

#### **STRENGTHS, RISKS, AND COMPLEXITIES OF THE CASE**

38. In reaching the Agreement, we worked with our co-counsel and clients, Ms. Stephens, and Messrs. Shurn and Muhammad, to weigh the value of the proposed settlement against the risks of class certification, demonstrating class liability, and proving damages.

39. While we remained committed to Plaintiffs' case throughout the litigation, we also were realistic regarding the risks going forward. This would have included the risks of having class certification denied in whole or in part. Simultaneously, there also would have been other motion practice (including motions for summary judgment), and the likelihood of a trial on some or all issues. This would have carried substantial risks for both sides on the overarching liability

questions of whether Defendant was paying owner-operators less than it promised them, whether provisions of its standard contract violated the TILA regulations and relatedly whether multiple categories of deductions it took from owner-operators' pay were unlawful, whether Defendant knowingly misled owner-operators as to its pay practices, and whether owner-operators in fact relied on Defendant's alleged misrepresentations in making business decisions.

40. Moreover, assuming Plaintiffs prevailed on liability as to one or more of their claims, the measure of damages still would have been hotly contested. Assuming Plaintiffs prevailed on some or all claims, the measure of damages presented further risk.

41. Based on our experience in this case and other compensation-related class actions in the transportation industry, it is our judgment that litigating this case through trial would have required thousands more hours of attorney and paralegal time (per side). Moreover, both sides would have had to incur significant additional expenses, including deposition and expert costs. This additional investment of resources may have caused the parties to become more entrenched in their positions, making the case more difficult to settle at a later stage. These very practical considerations confirm our judgment, as experienced class action attorneys in cases such as this, that the proposed settlement provides fair value and an excellent result for the class.

42. In sum, the result after dispositive motion practice and trial was highly uncertain. While it is possible that Plaintiffs could have won more than the current settlement value, it is also possible they could have won less (in either current value or absolute terms), or nothing at all. In contrast, the total settlement amount of \$3,350,000.00 will result in definite, immediate recoveries for the Settlement Class Members. The proposed settlement, therefore, offers a guaranteed, significant value to the Settlement Class Members that fairly and reasonably accounts for the very real risks and delays of continued discovery, depositions, motion practice, trial, and potentially appeal.

#### **PROPOSED SERVICE AWARDS**

43. Ms. Stephens and Mr. Shurn, owner-operators of BNVS Transport LLC, and Mr. Muhammad, owner-operator of Mein & Meen Trucking, Inc., provided an invaluable service in

the prosecution of this case. They worked with counsel regularly, sometimes taking multiple phone calls a day, and provided important information, documents, and insight regarding Defendant's policies and practices. All three prepared for and sat for deposition as well as working with counsel to provide substantive responses to interrogatories propounded on them. Collectively, they produced approximately 1,000 pages of documents.

44. Crucially, Ms. Stephens and Messrs. Shurn and Muhammad also participated in the mediation efforts in this case, attending and actively participating in both mediation sessions. Their input during these mediation sessions proved invaluable to helping the mediator better understand the issues at hand and achieving a strong result for the class. They also worked with us after the mediation to assist in drafting certain provisions of the long form settlement agreement and then reviewing the long form settlement agreement on behalf of the class.

45. Ms. Stephens and Messrs. Shurn and Muhammad missed out on work to attend their depositions and participate in the mediation efforts. Further, they have agreed to a release that is broader than the class release.

46. The Agreement permits Ms. Stephens and Messrs. Shurn and Muhammad to seek service awards in an amount not to exceed \$20,000 each. We believe that this amount fairly reflects their risks and contributions to achieve this settlement on behalf of the class. This will be further discussed when Plaintiffs file their motion for service award and supporting declarations in connection with the final fairness hearing.

#### **ATTORNEYS' FEES AND COSTS**

47. The Agreement provides that Plaintiffs will seek attorneys' fees totaling no more than one-third of the gross settlement amount. We agree this is in line with common practice in this Circuit of using a percentage method and is within the "'typical' fee 'between 33 and 40 percent[.]'" *T.K. v. Bytedance Tech. Co., Ltd.*, 2022 U.S. Dist. LEXIS 65322, at \* 66 (N.D. Ill. Mar. 25, 2022) (Blakey J.) (quoting *Dobbs v. DePuy Orthopaedics, Inc.*, 885 F.3d 455, 458 (7th Cir. 2018)).

48. A fee award of one-third the total settlement amount would also be in line with our lodestar.

My firm has invested approximately 1,300 hours into this case and there will be significant additional time working with the Settlement Administrator, responding to inquiries from Class Members, and preparing the legal briefs that will need to be submitted at the final approval stage. This does not include the time worked by our co-counsel. Indeed, I anticipate that the multiplier on our lodestar if we are awarded fees of one-third the total settlement will be very little, if anything, and may turn out to be a “negative” multiplier.

49. The Agreement further provides for reimbursement of Plaintiffs’ counsel’s out-of-pocket costs. During this case, we have incurred out-of-pocket costs related to experts, deposition court reporters, eDiscovery services, and mediation fees, among other things. Our costs are currently documented at \$40,056.

50. Pursuant to Fed. R. Civ. P. 23(h), we intend to file a separate motion for attorneys’ fees and costs on a date to be set by the Court. The separate motion for attorneys’ fees and costs will provide analysis as to the reasonableness of the fees and costs sought and show how they fall within the range of fees awarded in similar class action cases.

### **EXHIBITS**

51. A true and correct copy of the Class Action Settlement Agreement is attached hereto as **Exhibit 1**.

52. A true and correct copy of the proposed Notice of Class Action Settlement is attached hereto as **Exhibit 2**.

53. A true and correct copy of my curriculum vitae is attached hereto as **Exhibit 3**.

54. A true and correct copy of a description of Misericordia’s mission is attached hereto as **Exhibit 4**.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and is based upon my personal knowledge. Executed on September 28, 2022, in Berkeley, California.

/s/ Joshua G. Konecky  
Joshua G. Konecky

# EXHIBIT 1



## CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between Plaintiffs BNVS Transport LLC and Mein & Meen Trucking, Inc. (“Plaintiffs”), individually and on behalf of the Class, and Defendant C&K Trucking, LLC (“Defendant”) in the case of *BNVS Transport LLC and Mein & Meen Trucking, Inc., individually and on behalf of all others similarly situated, Plaintiffs, v. C&K Trucking, LLC*, Case No. 1:20-CV-04305, currently pending in the United States District Court, Northern District of Illinois, Eastern Division. This Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

### 1. DEFINITIONS.

- 1.1. “Action” means the lawsuit alleging violations of the Truth in Leasing Act, 49 U.S.C. § 14704(a)(2) and Illinois common law of contract and fraud against Defendant captioned as BNVS Transport LLC and Mein & Meen Trucking, Inc., individually and on behalf of all others similarly situated, Plaintiffs, v. C&K Trucking, LLC, Defendant, Case No. 1:20-CV-04305, initiated on or about July 22, 2020, and pending in the United States District Court, Northern District of Illinois, Eastern Division.
- 1.2. “Administrator” means JND Settlement Administration, the neutral entity the Parties have agreed to request that the Court appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s estimate submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Class” means all current or former owner-operators based in Illinois who signed one of Defendant C&K Trucking LLC’s standardized Independent Contractor Agreements and provided services pursuant to that agreement(s) at any time from July 22, 2010, to July 29, 2022.
- 1.5. “Class Counsel” means Stacey B. Vucko of Vucko Law LLP and Joshua Konecky and Sarah McCracken of Schneider Wallace Cottrell Konecky LLP.
- 1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.7. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, last known telephone number(s), last known email address(es); EIN, number of Settlement Workweeks, and number of Adjusted Settlement Workweeks, as defined below.
- 1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member.

- 1.9. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.10. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.11. "Class Period" means the period from July 22, 2010 to July 29, 2022.
- 1.12. "Illinois Class Period" means the period from July 22, 2010 to July 29, 2022.
- 1.13. "TILA Class Period" means the period from July 22, 2016 to July 29, 2022.
- 1.14. "Class Release" means all claims that were pleaded or could have been pleaded based on the facts alleged in Plaintiffs' original Complaint and/or First Amended Complaint filed in this action, including but not limited to any claims related to compensation or deductions, which accrued during the Class Period.
- 1.15. "Class Representatives" means Valinda Stephens and Bernard Shurn, the owner-operators of Plaintiff BNVS Transport LLC, and Damien Muhammad, the owner-operator of Plaintiff Mein & Meen, Inc.
- 1.16. "Class Representative Service Payments" means the payments to the Class Representatives for initiating the Action and providing services in support of the Action.
- 1.17. "Court" means the United States District Court for the Northern District of Illinois, Eastern Division.
- 1.18. "Defendant" means C&K Trucking, LLC.
- 1.19. "Defense Counsel" means Charles Andrewscavage and James Eckhart of Scopelitis, Garvin, Light, Hanson & Feary P.C.
- 1.20. "Effective Date" means the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. If no Participating Class Member objects to the Settlement or if any objection is withdrawn before the Court enters Judgment, then the Judgment is final as of the day the Court enters Judgment. If one or more Participating Class Members object to the Settlement, the Judgment is final as of the latest of the following occurrences: (a) if no timely appeal is filed, the day after the deadline for filing a notice of appeal from the Judgment; or (b) if a timely appeal from the Judgment is filed, the day after the appeal is dismissed or withdrawn, or the Judgment is affirmed.

- 1.21. "Final Approval" means the Court's Order Granting Final Approval of the Settlement.
- 1.22. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.23. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.24. "Gross Settlement Amount" means Three Million Three Hundred and Fifty Thousand Dollars (\$3,350,000.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Member Payments, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments, and the Administrator's Expenses.
- 1.25. "Individual Class Member Payment" means the Participating Class Member's share of the Net Settlement Amount calculated according to the distribution formula provided in Paragraph 3.2.4 below.
- 1.26. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.27. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Administration Expenses Payment, and the Reserve Fund.
- 1.28. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion in accordance with the provisions of Paragraph 8.4 below and the Class Notice.
- 1.29. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.30. "Plaintiffs" mean BNVS Transport LLC and Mein & Meen Trucking, Inc., the Named Plaintiffs in the Action.
- 1.31. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.32. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.33. "Released Class Claims" means the claims being released in the Class Release, as described in Paragraph 6.2 below.
- 1.34. "Released Parties" means: Defendant C&K Trucking, LLC, and its parents, subsidiaries, affiliates, successors and assigns, each now existing or hereafter created or acquired either

directly or indirectly through a wholly or partially owned corporation, and each of their agents, servants, employees, directors, officers, and insurers, and each of its former and present directors, officers, shareholders, owners, insurers, predecessors, successors, and assigns.

- 1.35. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.36. "Reserve Fund" means the sum of Fifty Thousand Dollars (\$50,000.00), which shall be allocated from the Maximum Settlement Amount and set aside during the 180-day cash checking period to make Individual Class Member Payments to Class Members, if any, who were not identified in Defendants' records or otherwise before the Effective Date.
- 1.37. "Residue" refers to the unclaimed funds of the Net Settlement Sum and Reserve Fund allocated to the Class if fewer than all members of the Class cash the checks for their Individual Class Member Payments sent to them.
- 1.38. "Response Deadline" means sixty (60) days after the Administrator mails Notice to Class Members. It shall be the last date on which Class Members may: (a) postmark any Request for Exclusion from the Settlement for the Request to be timely and valid, (b) postmark any objection to the Settlement for such objection to be timely and valid, and (c) postmark any dispute as to the Class Data pertaining to the calculation of an Individual Class Member Payment for the dispute to be timely and valid. The Response Deadline for Class Members to whom the Class Notice is remailed after having been returned as undeliverable to the Administrator shall be seventy (70) calendar days after the Administrator's initial mailing of the Notice to Class Members, or fourteen (14) days after the re-mailing, whichever is later.
- 1.39. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.40. "Settlement Workweek" means each Workweek during which each Class Member earned one or more Settlement Statements based on the performance of services for Defendant C&K using one or more of the vehicles registered with that Class Member.
- 1.41. "Adjusted Settlement Workweek" means the value of a Settlement Workweek after applying the 2x multiplier associated with Workweeks occurring during the TILA Class Period, as set forth in Section 3.2.4 below.
- 1.42. "Workweek" means any week during which a Class Member performed services for Defendant C&K Trucking, LLC for at least one day, during the Class Period.

## **2. RECITALS.**

- 2.1. On July 22, 2020, Class Representatives Valinda Stephens, Bernard Shurn, and Damien Muhammad commenced this Action by filing a complaint in the United States District Court, Northern District of Illinois, Eastern Division, alleging causes of action against

Defendant C&K Trucking LLC for alleged violations of the Truth in Leasing Act (“TILA”), 49 U.S.C. § 14704(a)(2), and Illinois common law of contract and fraud. On October 5, 2020, Plaintiffs filed a First Amended Complaint alleging the same causes of action based on the same factual allegations, but substituting their companies (BNVS Transport LLC and Mein & Meen Trucking, Inc.) as the Named Plaintiffs. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”). Defendant C&K Trucking LLC denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

- 2.2. On October 26, 2020, Defendant brought a motion to dismiss the First Amended Complaint. Plaintiffs filed an opposition to the motion on November 24, 2020, and Defendant filed a reply brief on December 7, 2020. On May 15, 2021, the Court issued a written order denying the motion, and Defendant filed its Answer to the First Amended Complaint on June 4, 2021.
- 2.3. Thereafter, the parties propounded and responded to requests for production of documents and interrogatories. Defendant searched for and produced over 20,000 pages of documents, while Plaintiffs searched for and produced approximately 1,000 pages of documents. The parties also provided substantive answers (in addition to objections) to the interrogatories served on each other.
- 2.4. On January 12, 2022, Plaintiffs took the deposition of Defendant’s President and CEO, Sean McShane, who appeared as a designee witness pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. Defendant took the deposition of Valinda Stephens in her individual capacity and as a Rule 30(b)(6) designee witness of BNVS Transport LLC on February 11, 2022, the deposition of Bernard Shurn on February 24, 2022, and the deposition of Damien Muhammad in his individual capacity and as a Rule 30(b)(6) designee witness of Plaintiff Mein & Meen, Inc., on March 22, 2022.
- 2.5. On May 20, 2022, Plaintiffs filed their motion for class certification, which was supported by excerpts from the foregoing depositions, documents and interrogatory responses, declarations from putative class members, and a memorandum of points and authorities.
- 2.6. After the foregoing discovery and depositions, and the filing of Plaintiff’s motion for class certification, the parties and their counsel of record engaged in extensive, arms-length negotiations facilitated by Professor Lynn Cohn, Director of the Center on Negotiation and Mediation at Northwestern Law School (the Mediator). The negotiations were informed by documents, interrogatory responses, and depositions provided by both sides, as well as exchange of mediation data and information (including revenue and settlement data produced by Defendant for the time period through May 16, 2021), the exchange of mediation briefs and argument with substantive legal and factual analysis, two mediation sessions conducted by Zoom on June 27, 2022 and July 29, 2022, and discussions between the parties, experts and their counsel between the

mediation sessions. Both mediation sessions were attended by representatives of the parties, including Sean McShane, President and CEO of Defendant C&K Trucking, LLC, Valinda Stephens and Bernard Shurn, owner-operators of Plaintiff BNVS Transport LLC, and Damien Muhammad, owner-operator of Plaintiff Mein & Meen, Inc. With the assistance of Mediator Cohn, the parties reached an agreement on the material terms of a class action settlement contained herein and to be presented to the District Court for approval.

- 2.7. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### **3. MONETARY TERMS.**

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant shall pay Three Million Three Hundred and Fifty Thousand Dollars (\$3,350,000.00). Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount:

- 3.2.1. To Class Representatives: Service Payment to Class Representatives Valinda Stephens, Bernard Shurn, and Damien Muhammad of not more than Twenty Thousand Dollars (\$20,000.00) each, for a total of not more than Sixty Thousand Dollars (\$60,000.00), in addition to any Individual Class Member Payment the Class Representatives are entitled to receive as Participating Class Members. Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed these amounts. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for any taxes owed on the Class Representative Service Payments.

- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be One Million One Hundred Sixteen Thousand Six Hundred and Sixty-Six Dollars (\$1,116,666.00) and a Class Counsel Litigation Expenses Payment of not more than Fifty-Thousand Dollars (\$50,000.00). Defendant will not oppose requests for these payments provided they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment in accordance with Fed. R. Civ. P. 23(h) and Order of the Court. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator



will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment of \$54,309.00, as may be adjusted and approved by the Court at final approval. To the extent the Administration Expenses are less or the Court approves payment less than \$54,309.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: The Administrator will determine the Individual Class Member Payments according to the following distribution formula:

- (a) First, the Administrator will determine, for each Participating Class Member, the total number of weeks in the Class Period during which Defendant issued that Participating Class Member one or more Settlement Statements based on the performance of services for Defendant C&K using one or more of the vehicles registered with that Class Member. This figure will be known as a Settlement Workweek;
- (b) Second, the Administrator will count each Settlement Workweek within the TILA Class Period as two Adjusted Settlement Workweeks; whereas each Settlement Statement Workweek occurring within the Class Period, but before the TILA Class Period, will count as one Adjusted Settlement Workweek;
- (c) Third, the Administrator will aggregate all the Adjusted Settlement Workweeks for all the Participating Class Members to arrive at the Total Adjusted Settlement Workweeks for the entire Settlement Class;
- (d) Fourth, the Administrator will calculate each Participating Class Member's Settlement Ratio by dividing the number of Adjusted Settlement Workweeks belonging to that Participating Class Member by the Total Adjusted Settlement Workweeks for the entire Settlement Class; and
- (e) Fifth, the Administrator will calculate each Participating Class Member's Individual Class Member Payment by multiplying that Participating Class Member's Settlement Ratio by the Net Settlement Amount.

- 3.2.4.1. Tax Allocation of Individual Class Member Payments. Each Participating Class Member's Individual Class Member Payment will be reported on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1. Class Members and Settlement Workweeks. Based on a review of its records to date, Defendant estimates there are 1,010 Class Members and 100,617 Settlement Workweeks.
- 4.2. Class Data. Not later than seven (7) days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator in the form of a Microsoft Excel spreadsheet. The Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. The Administrator may also share Class Data with Class Counsel to the extent necessary for Class Counsel to fulfill their duties to the Class, in which case Class Counsel also agree to use the Class Data only for purposes of this Settlement, and restrict access to the Class Data to those who need access to the Class Data to fulfill their duties to the Class. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data. Class Counsel agrees that it will destroy, and will instruct the administrator to destroy, all Class Data within thirty (30) days after all payments from the Net Settlement Fund and Reserve Fund called for in this Settlement are completed. Upon request by Defendant's Counsel, Class Counsel will also inform Defense Counsel when it has destroyed the Class Data.
- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than seven (7) days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Member Payments, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
- 4.4.1. The Administrator will issue checks for the Individual Class Member Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator



will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2. The Administrator must conduct at least one Class Member Address Search (skip trace) for any Class Member whose check is returned undelivered without USPS forwarding address. Within seven days of receiving a returned check, the Administrator must re-mail checks to any USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3. If, after the mailing of the Individual Class Member Payments described in Paragraph 4.4.1, but before expiration of the 180-day check cashing period, a current or former owner operator of Defendant who was not identified in the Class Data provided to the Administrator, contacts the Parties, Class Counsel, Defendants' Counsel and/or the Administrator with a claim or inquiry that they may be a Class Member (or is otherwise identified by one of the Parties, Class Counsel, Defendants' Counsel and/or the Administration as a potential Class Member), then whoever receives this information shall immediately notify Counsel for the Parties and the Administrator, and provide the name, contact information, time period of work for Defendant (even if an estimate), and any other relevant documents or information that the potential Class Member shares and consents to being provided to the Administrator and Counsel. The Administrator shall then ascertain, in consultation with Class Counsel and Defense Counsel, whether the owner operator is in fact a Class Member who may be entitled to an Individual Class Member Payment. If the Administrator concludes that the owner operator is a Class Member, the Administrator shall calculate an Individual Class Member Payment for the newly identified Class Member using the same formula for Participating Class Members contained in Paragraph 3.2.4, above, such that the additional Class Member payment would be equal to what the payment would have been calculated to be had the Class Member(s) and their respective Settlement Workweeks been identified before the Effective Date. In both the determination of whether the newly identified owner operator is a Class Member as well as the calculation of any Individual Class Member Payment for such newly identified Class Member, the Administrator shall consider Defendants' records and any records provided by the owner operator. To the extent there is uncertainty as to the dates and quantity of Settlement Workweeks, the Administrator may also consider reasonable estimations of the owner operator. The Administrator's determinations shall be binding on the Parties.
- 4.4.4. If after 180 calendar days of mailing, the checks cashed by Participating Class Members total less than 100% of the Net Settlement Sum and/or if there is

money remaining in the Reserve Fund, the Settlement Administrator shall issue a check of the unpaid residue or unclaimed or abandoned Class Members' funds to the *cy pres* beneficiary selected by the Parties: Misericordia. Participating Class Members who do not timely cash their Individual Settlement Payments and whose checks are cancelled shall nevertheless be bound by all of the terms of the Settlement, including without limitation, the Class Release set forth herein.

Notwithstanding the above, if there is more than \$50,000.00 in aggregate remaining in the Net Settlement Fund and Reserve Fund after the 180-day check cashing period, Plaintiffs may elect to have the residual used for a second distribution to those Participating Class Members who cashed their original checks within the 180-period. This second distribution, if any, would be made within thirty days (30) days after the close of the 180-day period and the additional payments to the Participating Class Members would be calculated on a pro-rata basis, such that the payments sent in the second distribution would be in the same proportion to one another as the original Individual Class Member Payments were among those same Participating Class Members. The fees and costs of the Settlement Administrator in performing this second distribution would come out of the Settlement Fund such that a second distribution would not result in additional costs to Defendant. If there is a second distribution, then any residual remaining after said distribution would be donated to the agreed-upon *cy pres* beneficiary.

4.4.5. The payment of Individual Class Member Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

**6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount, the Class Representatives and Class Members will release claims against all Released Parties as follows:

6.1 Class Representative Releases. In addition to releasing all claims covered by the Class Release, Class Representatives Valinda Stephens, Bernard Shaw and Damien Muhammad, in their individual capacities and as owner/operators of BNVS Transport, LLC, and Mein & Meen, Inc., and on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties from any other claims, transactions, or occurrences that occurred up until the date of their signing of this Agreement, except that this Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Class Representatives acknowledge that they may discover facts or law different from, or in addition to, the facts or law that they now know or believe to be true but agree, nonetheless, that their Release shall be and remain effective in all respects, notwithstanding such different or additional facts or discovery of them.

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents,

attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were pleaded or could have been pleaded based on the facts alleged in Plaintiffs' original Complaint and/or First Amended Complaint filed in this action, including but not limited to any claims related to compensation or deductions, which accrued during the Class Period ("Class Release").

## **7. MOTION FOR PRELIMINARY APPROVAL.**

- 7.1 Plaintiff's Responsibilities. Plaintiff will prepare the documents necessary for obtaining Preliminary Approval. Plaintiffs' counsel will circulate a draft of the motion and memorandum in support of the motion for preliminary approval to Defense Counsel reasonably before the filing such that Defense Counsel may review and comment on the motion papers before they are filed.
- 7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than September 28, 2022; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone or video conference, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone or videoconference, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## **8. SETTLEMENT ADMINISTRATION.**

- 8.1 Selection of Administrator. The Parties have jointly selected JND Legal Administration to serve as the Administrator and verified that, as a condition of appointment, JND Legal Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements and Ediscovery/document hosting.
- 8.2 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.3 Notice to Class Members.

- 8.3.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members and Settlement Workweeks in the Class Data.
- 8.3.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. Each Class Notice shall be tailored to prominently estimate the dollar amount of the Individual Class Member Payment payable to the Class Member, the number of Settlement Workweeks and Adjusted Settlement Workweeks belonging to the Class Member, and the formula for calculating his or her Individual Class Member Payment. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 8.3.3 Not later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct at least one Class Member Address Search (skip trace), and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.3.4 The deadlines for Class Members’ written objections, Challenges to Settlement Workweeks, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 8.3.5 If the Administrator, the Parties, Defense Counsel, or Class Counsel are contacted by or otherwise discover any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone or videoconference, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later. If the Parties disagree, the Administrator will have the authority to resolve the dispute and the Administrator’s determination will be binding, subject to any final review of the Court. If the Administrator determines that any persons are Class Members, such

persons will be entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.4 Requests for Exclusion (Opt-Outs).

8.4.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator by mail a signed written Request for Exclusion not later than the Response Deadline. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement. To be timely and valid, a Request for Exclusion must (a) be written; (b) be signed by the Class Member requesting exclusion; (c) identify the name of the Class Member requesting exclusion; (d) identify the Action; (e) state that the Class Member has reviewed the Class Notice regarding the settlement of the Action and the consequences of requesting exclusion from it, and wishes to be excluded from the settlement; (f) be mailed to the Settlement Administrator at the address provided in the Class Notice; and (g) be postmarked on or before the Response Deadline.

8.4.2 If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii) fourteen (14) calendar days from the date of the cure letter to postmark a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked within that period, it will be deemed untimely.

8.4.3 If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.4.4 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Class Release.

8.4.5 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Member Payment or have the right to object to the class action components of the Settlement.

8.5 Disputes to Settlement Workweek Data and Individual Class Member Calculations.

Class Members may dispute the number of Settlement Workweeks, Adjusted Settlement Statement Workweeks and/or Individual Class Member Payment calculation for the Class Member as shown in his or her Class Notice. For a dispute to be timely submitted, it must be mailed to the Administrator at the address provided in the Class Notice and postmarked on or before the Response Deadline. The Class Notice will advise Class Members that any dispute should explain the basis of the dispute, state the number of Settlement Workweeks, Adjusted Settlement Workweeks and/or calculation that the Class Member believes is correct, and attach any documentation reasonably available to support the Class Member's dispute. The Settlement Administrator will in turn provide any such submissions by Class Members to the Parties. The Parties will meet and confer to determine whether adjustments to the Class Member's Individual Class Member Payment is warranted. If the Parties are unable to reach an agreement as to a dispute, the Court will decide the outstanding issue. The Court's determination of the eligibility for and amount of any Individual Class Member Payment will be binding upon the Class Member and the Parties. In the absence of circumstances indicating fraud, manipulation, negligence, or destruction, Defendant's records will be given a rebuttable presumption of accuracy.

8.6 Objections to Settlement.

- 8.6.1 Only Participating Class Members may object to this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representatives Service Payments.
- 8.6.2 For an Objection to be valid, it must (a) be written; (b) be signed by the Participating Class Member making the objection; (c) identify the name of the Participating Class Member making the objection; (d) identify the Action; (e) be mailed to the Settlement Administrator at the address provided in the Class Notice; and (f) be postmarked on or before the Response Deadline. The Class Notice will also advise that any Objection should explain the reason for the objection, provide any facts that support the objection, and provide the most recent mailing address, telephone number and/or other contact information of the Participating Class Member. The Settlement Administrator will forward copies of all written Objections to both Class Counsel and Counsel for Defendant within three (3) calendar days of receipt. The postmark date will be deemed the exclusive means for determining whether a written Objection is timely.
- 8.6.3 At the Court's discretion, any Participating Class Member may also object by appearing at the Final Approval Hearing, regardless of whether such Participating Class Member submits a written Objection.
- 8.6.4 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written or oral objections to the Settlement



Agreement or appeal from the Final Approval and Judgment thereon. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement. The Settlement Administrator shall provide Class Counsel with a declaration that attaches and authenticates all Objections received, which declaration Class Counsel shall file with the Court concurrently with the motion seeking final approval of the Settlement.

8.6.5 Non-Participating Class Members have no right to object to the Settlement.

8.7 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.7.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members. This will include the date, time and location for the Final Approval Hearing. It also will include copies of the Settlement Agreement, Class Notice, First Amended Complaint, Answer and Affirmative Defenses to the First Amended Complaint, Motion for Preliminary Approval, Preliminary Approval Order, Motion for Final Approval, Motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Motion for Class Representative Service Payment, and any Final Approval and Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.7.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) court days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.7.3 Objections. The Administrator will promptly review on a rolling basis any objections to the Settlement to ascertain their validity. Not later than five (5) court days after the Response Deadline, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid objections; (b) the names and other identifying information of Class Members who have submitted invalid objections; and (c) copies of all objections to the Settlement submitted (whether valid or invalid).

8.7.4 Disputes concerning Workweeks and Individual Class Member Payment Calculations. Not later than five (5) court days after the Response Deadline,

the Administrator shall email a list to Class Counsel and Defense Counsel containing any Class Member disputes concerning the number of Settlement Workweeks, Adjusted Settlement Workweeks and/or Individual Class Member Payment calculations; (b) the status of each such dispute, including whether it has been resolved and, if so, how; and (c) the names and other identifying information of Class Members who submitted any such disputes.

8.7.5 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, disputes received and/or resolved, and checks mailed for Individual Class Member Payments. (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.7.6 Administrator’s Declaration. Not later than five (5) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the total number of written objections, the total number of disputes, and attach the Exclusion List and any written objections received. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

8.7.7 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements of all payments made under this Agreement. At least seven (7) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement.

9. **CLASS SIZE ESTIMATES** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 1,010 Class Members and 100,617 Total Settlement Workweeks during the Class Period. If this number increases by more than five percent (5%) during the course of settlement approval and/or implementation process, the parties will meet and confer in good faith to determine whether and/or the extent to which the Gross Settlement Amount should be increased. Similarly, Defendant warrants that it



provided Class Counsel with all data in its possession showing settlement payments made to Class Members and corresponding revenue received by C&K for loads or assignments pertaining to Class Members from July 22, 2010 to May 21, 2021. If additional settlement and/or revenue data pertaining Class Member loads or assignments during this time period are located during the course of settlement approval and/or settlement implementation process, the parties will meet and confer in good faith to determine whether and/or the extent to which the Gross Settlement Amount should be increased.

10. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10 individuals, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
11. **AGREEMENT THAT WAIVER IN ICOA DOES NOT APPLY.** The parties agree that no Class Member will be deemed to have waived any right to participate in this Settlement by virtue of signing any agreement, including any Independent Contractor Operating Agreement promulgated by Defendant, that purports to waive the owner operator's right to participate in a class action. For example, the Waiver at Paragraph 28.2 of Defendant's current Independent Contractor Operating Agreement shall not preclude in any way any Class Member's right to receive an Individual Class Member Payment or otherwise participate in this Settlement. The Settlement Notice sent to Class Members regarding this Settlement shall contain a clear statement to this effect. If a potential Class Member submits a Request for Exclusion that states or suggests that the Request is being submitted because of a concern that the Class Member had previously waived his or her right to participate, the Administrator shall promptly contact the Class Member to inform him or her that the waiver does not apply and that he or she can participate in the action and receive an Individual Class Member Payment. Nothing in this section should be read as precluding or affecting Defendant's ability to enforce Paragraph 28.2 of the ICOA (or any of its other contractual rights) in any other litigation or dispute. Nothing in this section should be read as an endorsement, agreement or concession by Plaintiffs, either directly or indirectly, that Paragraph 29.2 of the ICOA (or any other contractual provision) is valid and/or enforceable in any other litigation or dispute. Defendant expressly reserves whatever right it may have absent this Settlement to enforce Paragraph 28.2 of Defendant's current Independent Contractor Operating Agreement in any subsequent litigation brought by a Class Member or in any other litigation brought by any individual who is not a Class Member, whereas Plaintiffs on behalf of the Class expressly reserve whatever right they may have absent this Settlement to object and/or oppose such enforcement.
12. **MOTION FOR FINAL APPROVAL.** Not later than the deadline set by the Court (or if not specific deadline is set, the default date set by the Local Rules based on the final approval hearing date), Plaintiffs will file in Court, a motion for final approval of the

Settlement, a Proposed Final Approval Order, and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel reasonably before the filing for Defendant to have a reasonable opportunity to review them before the filing. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone or videoconference, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

12.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

12.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

12.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment or Dismissal, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

12.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

12.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the

appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel, or the particular Workweek distribution formula for calculating Individual Class Member Payments, shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

**13. AMENDED JUDGMENT.** If any amended judgment is required, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

**14. ADDITIONAL PROVISIONS.**

**14.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval, or enter Judgment, any order concerning class certification for purposes of this Settlement will be vacated and Defendant reserves the right to contest certification of any class for any reason, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

**14.2 Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in

accordance with Class Counsel's ethical obligations owed to Class Members, nor does it restrict the Parties' communications with the Administrator in connection with preparing for and undertaking settlement administration activities.

14.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

14.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

14.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

14.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

14.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

14.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

14.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court, except that non-material changes may be effectuated by counsel, if approved by the Court.

- 14.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 14.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to federal law in the Seventh Circuit and the internal laws of the state of Illinois, without regard to conflict of law principles.
- 14.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 14.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 14.14 Non-Disparagement. The Parties agree that from this time forward they will refrain from making any defamatory, derogatory, or disparaging statements about the other, or any person associated with or representing the other. The Parties further agree that from this time forward they will not make or repeat any allegation of illegal, immoral, unethical, or improper conduct about the other, occurring or allegedly occurring through the date of Judgment, unless ordered to do so by a court of competent jurisdiction or otherwise required by law.
- 14.15 Use and Return of Class Data. Information provided to Class Counsel and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 14.16 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 14.17 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 14.18 Notice. All notices, demands or other communications between the Parties in

connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Joshua Konecky  
Sarah McCracken  
Schneider Wallace Cottrell Konecky LLP  
2000 Powell Street, Suite 1400  
Emeryville, CA 94608  
jkonecky@schneiderwallace.com  
smccracken@schneiderwallace.com

Stacey Vucko  
VUCKO LAW LLP  
2208 Midwest Road, Suite 104  
Oak Brook, IL 60523  
svucko@vuckolaw.com

To Defendant C&K Trucking, LLC:

Charles Andrewsavage  
James Eckhart  
SCOPELITIS, GARVIN, LIGHT, HANSON  
& FEARY, P.C.  
30 West Monroe Street, Suite 1600  
Chicago, IL 60603  
Telephone: (312) 255-7200  
candrewsavage@scopelitis.com  
jeckhart@scopelitis.com

14.19 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

14.20 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

IT IS HEREBY AGREED.

DATED: September \_\_, 2022

\_\_\_\_\_  
Sean McShane, President C&K Trucking, Inc.

DATED: September \_\_, 2022

09 / 27 / 2022



\_\_\_\_\_  
Valinda Stephens, BNVS Transport LLC.

DATED: September \_\_, 2022

09 / 27 / 2022



\_\_\_\_\_  
Bernard Shurn, BNVS Transport LLC.

DATED: September \_\_, 2022

09 / 28 / 2022



\_\_\_\_\_  
Damien Muhammad, Mein & Meen, Inc.










## Audit Trail

<b>TITLE</b>	BNVS et al v. C&K Trucking Settlement Agreement for...
<b>FILE NAME</b>	BNVS et al v C&K_...and signature.pdf
<b>DOCUMENT ID</b>	2c10640c49d83e368d985a4da957bd4d47a6b610
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	● Signed

## Document History

 SENT	<b>09 / 27 / 2022</b> 14:21:47 UTC-7	Sent for signature to Valinda Stephens (b[REDACTED]t@yahoo.com), Bernard Shurn (b[REDACTED]9@gmail.com) and Damien Muhammad (m[REDACTED]n@gmail.com) from mail@schneiderwallace.com IP: 72.18.247.90
 VIEWED	<b>09 / 27 / 2022</b> 14:59:55 UTC-7	Viewed by Bernard Shurn (b[REDACTED]9@gmail.com) IP: 172.58.162.118
 VIEWED	<b>09 / 27 / 2022</b> 15:08:18 UTC-7	Viewed by Valinda Stephens (b[REDACTED]t@yahoo.com) IP: 172.58.142.211
 SIGNED	<b>09 / 27 / 2022</b> 15:43:58 UTC-7	Signed by Bernard Shurn (b[REDACTED]9@gmail.com) IP: 172.58.162.178
 SIGNED	<b>09 / 27 / 2022</b> 15:44:54 UTC-7	Signed by Valinda Stephens (b[REDACTED]t@yahoo.com) IP: 172.58.142.211





## Audit Trail

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<b>TITLE</b>	BNVS et al v. C&K Trucking Settlement Agreement for...
<b>FILE NAME</b>	BNVS et al v C&K_...and signature.pdf
<b>DOCUMENT ID</b>	2c10640c49d83e368d985a4da957bd4d47a6b610
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	● Signed

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## Document History

**09 / 27 / 2022**  
17:11:59 UTC-7Viewed by Damien Muhammad (m[REDACTED]n@gmail.com)  
IP: 172.56.249.47**09 / 28 / 2022**  
15:42:21 UTC-7Signed by Damien Muhammad (m[REDACTED]n@gmail.com)  
IP: 172.58.137.61**09 / 28 / 2022**  
15:42:21 UTC-7

The document has been completed.

IT IS HEREBY AGREED.

DATED: September \_\_, 2022

Sean P McShane  
Sean McShane, President C&K Trucking, Inc.

DATED: September 27, 2022

\_\_\_\_\_  
Valinda Stephens, BNVS Transport LLC.

DATED: September \_\_, 2022

\_\_\_\_\_  
Bernard Shurn, BNVS Transport LLC.

DATED: September \_\_, 2022

\_\_\_\_\_  
Damien Muhammad, Mein & Meen, Inc.

DATED: September 28, 2022



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Charles Andrewsavage,  
Scopelitis, Garvin, Light, Hanson & Feary P.C.,  
Counsel for Defendant C&K Trucking, LLC.

28

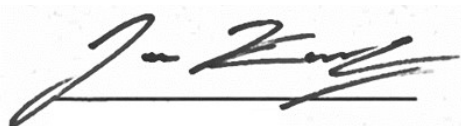
DATED: September \_\_, 2022



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Stacey B. Vucko  
Vucko Law LLP  
Counsel for Plaintiffs

DATED: September 28, 2022



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Joshua Konecky  
Schneider Wallace Cottrell Konecky, LLP  
Counsel for Plaintiffs



## Audit Trail

<b>TITLE</b>	Settlement Agreement
<b>FILE NAME</b>	Ex. 1 Signed Sett...reement FINAL.pdf
<b>DOCUMENT ID</b>	be218fc793ba769027b10ff92a3d5131f047d177
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	● Signed

## Document History



SENT

**09 / 28 / 2022**

16:54:06 UTC-7

Sent for signature to Stacey B. Vucko (svucko@vuckolaw.com)  
from mail@schneiderwallace.com  
IP: 72.18.247.90



VIEWED

**09 / 28 / 2022**

16:59:42 UTC-7

Viewed by Stacey B. Vucko (svucko@vuckolaw.com)  
IP: 73.246.137.1



SIGNED

**09 / 28 / 2022**

17:02:12 UTC-7

Signed by Stacey B. Vucko (svucko@vuckolaw.com)  
IP: 73.246.137.1



COMPLETED

**09 / 28 / 2022**

17:02:12 UTC-7

The document has been completed.

## **COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL**

*BNVS Transport LLC, et al., v. C&K Trucking, LLC*

Case No. 1:20-CV-04305

United States District Court, Northern District of Illinois, Eastern Division

***The United States District Court for the Northern District of Illinois authorized this Notice.***

***Read it carefully!***

***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

A proposed class action settlement has been reached and preliminarily approved by the Court in a lawsuit that sought compensation, penalties and interest for alleged underpayments and chargebacks in the settlement statements of the owner operators contracting with C&K Trucking, LLC, in Illinois. C&K Trucking, LLC denies these allegations, and the Court has not found that C&K engaged in any wrongful conduct. The proposed class action settlement provides for monetary payments to the members of a "Class" defined as "all current or former owner-operators based in Illinois who signed one of Defendant C&K Trucking LLC's standardized Independent Contractor Agreements and provided services pursuant to that agreement(s) at any time from July 22, 2010, to July 29, 2022." You have received this notice because the records of C&K Trucking indicate that you and/or your business may be a member of this Class ("Class Member") and eligible to receive money from the proposed class action settlement.

You do **not** need to do anything to receive your share of the settlement. However, if you wish to opt-out of the settlement, you must submit a "Request for Exclusion" in accordance with the instructions in Section 6 of this Notice below. If you wish to Object to the settlement, you must follow the instructions in Section 7 of this Notice below.

Based on the records of C&K Trucking, and the distribution formula set forth in the proposed settlement, you are scheduled to receive an **Individual Class Member Payment of approximately \$\_\_\_\_\_**. This is an estimate and the actual amount you receive may be different depending on certain factors not presently known.

The above estimate is based on C&K Trucking's records showing that there were \_\_\_\_\_ weeks between July 22, 2010 and July 29, 2022, during which C&K Trucking issued you or your business one or more Settlement Statements for services provided to C&K Trucking, and that \_\_\_\_\_ of these weeks occurred between July 22, 2016 and July 29, 2022. The specific formula for calculating your workweeks and your resulting Individual Class Member Payment is explained in Section 4 of this Notice. If you believe that you should be credited with more weeks, you can submit a data dispute by the [ADD DATE] as explained in Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it.

**C&K Trucking will not retaliate against you for receiving an Individual Class Member Payment, or for objecting to or opting out of the proposed Settlement.**

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>You Don't Have to Do Anything to Participate in the Settlement</b>	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Member Payment in the amount estimated above. In exchange, you will give up your right to assert the claims against C&K Trucking that are covered by this Settlement (Released Claims).
<b>You Can Opt-out of the Settlement</b>  <b>The Opt-out Deadline is _____</b>	If you don't want to fully participate in the proposed settlement, you can opt-out of it by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer be eligible for an Individual Class Member Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of this Notice.
<b>Participating Class Members Can Object to the Settlement</b>  <b>Written Objections Must be Submitted by _____</b>	All Class Members who do not opt-out can object to any aspect of the proposed Settlement. See Section 7 of this Notice
<b>You Can Participate in the _____ Final Approval Hearing</b>	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost). Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
<b>You Can Challenge the Calculation of Your Workweeks/Pay Periods</b>  <b>Written Challenges Must be Submitted by _____</b>	The amount of your Individual Class Member Payment depends on the number of weeks between July 22, 2010, to July 29, 2022, in which C&K Trucking issued you or your business one or more Settlement Statements for services provided to C&K Trucking. The number of such weeks that C&K Trucking's records show for you is stated on the first page of this Notice. If you disagree with this number, you may submit a challenge. Any such challenge must be submitted by _____ to be timely and considered. See Section 4 of this Notice.

## **1. WHAT IS THE ACTION ABOUT?**

The named plaintiffs who filed this Action are two owner-operators that used to provide drayage transportation services to C&K Trucking, LLC, in Illinois. The Action accuses C&K Trucking of violating the Truth in Leasing Act, 49 U.S.C. § 14704(a)(2), and Illinois common law of breach of contract and fraud, by paying the owner operators less than the agreed-upon amounts for their runs and for not adequately disclosing the grounds for several categories of deductions or chargebacks made against their pay. Defendant C&K Trucking strongly denies violating any laws or failing to pay the contractually agreed-upon amounts. C&K Trucking further contends it complied with all applicable laws and contractual obligations.

## **2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

So far, the Court has made no determination whether C&K Trucking or Plaintiffs are correct on the merits. In the meantime, after conducting discovery, taking witness statements, and performing a legal analysis of the contracts and applicable law, Plaintiffs and C&K agreed to appear before an experienced mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and C&K Trucking have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, C&K Trucking does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) C&K Trucking has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) the settlement is in the best interests of the Class Members. The Court preliminarily approved the proposed settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

## **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

1. C&K Trucking Will Pay \$3,350,000.00 as the Gross Settlement Amount (Gross Settlement). C&K Trucking has agreed to deposit the Gross Settlement into an escrow account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Member Payments, Class Representative Service Payments, Class Counsel’s attorney’s fees and expenses, and the Administrator’s expenses. Assuming the Court grants Final Approval, C&K Trucking will fund the Gross Settlement not more than 7 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following

deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to one-third (1/3) of the Gross Settlement to Class Counsel for attorneys' fees and up to \$\_\_\_\_\_ for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$\_\_\_\_\_ each to the three Class Representatives as Service Payments for filing the Action, producing documents, answering interrogatories, having their depositions taken, and participating in the mediation sessions that resulted in the Settlement. A Class Representative Award will be the only monies Plaintiffs will receive other than their Individual Class Member Payments.
- C. Up to \$\_\_\_\_\_ to the Administrator for services administering the Settlement.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Member Payments to Participating Class Members using the formula described in Section 4 below.
- 4. Taxes Owed on Payments to Class Members. Each Participating Class Member's Individual Class Member Payment will be reported on an IRS 1099 Form.

Although Plaintiffs and C&K Trucking have agreed to this tax allocation, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Member Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will either be redistributed to the Class Members who cashed their checks and/or paid to a non-profit organization or foundation ("Cy Pres").
- 6. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. If the Settlement does not become Final for any of these reasons, the Agreement will be void such that C&K Trucking would not pay any money and Class Members would not



release any claims against C&K Trucking.

7. Administrator. The Court has appointed a neutral company, JND Legal Administration (the “Administrator”) to send this Notice, calculate and make payments, and mail and re-mail settlement checks and tax forms. The Administrator also will process Class Members’ Requests for Exclusion, Objections, and Disputes as to the number of Settlement Statement Workweeks or Adjusted Settlement Statement Workweeks, if any. The Administrator will also perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
8. Participating Class Members’ Release. After the Judgment is final and C&K Trucking has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by mailing a timely and valid Request for Exclusion to the Administrator in accordance with the instructions set forth in Section 6 below, you cannot sue, continue to sue, or be part of any other lawsuit against C&K Trucking or related entities for claims that have been resolved in this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were pleaded or could have been pleaded based on the facts alleged in Plaintiffs’ original Complaint and/or First Amended Complaint filed in this action, including but not limited to any claims related to compensation or deductions, which accrued between July 22, 2010 and July 29, 2022.

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Member Payments. The Administrator will calculate Individual Class Member Payments according to the following distribution formula:
  - (a) First, the Administrator will determine, for each Participating Class Member, the total number of weeks in the Class Period during which C&K Trucking issued that Participating Class Member one or more Settlement Statements based on the performance of services for Defendant C&K using one or more of the vehicles registered with that Class Member. This figure will be known as a Settlement Workweek;
  - (b) Second, the Administrator will count each Settlement Workweek between July 22, 2016 to July 29, 2022 as two Adjusted Settlement Workweeks; whereas each Settlement Workweek occurring between July 22, 2010 and July 21, 2016, will count as one Adjusted Settlement Workweek. The Parties have agreed to this formula as a fair and equitable approximation of the difference in potential value and risks of the claims at each time period;

- (c) Third, the Administrator will aggregate all the Adjusted Settlement Workweeks for all the Participating Class Members to arrive at the Total Adjusted Settlement Workweeks for the entire Settlement Class;
  - (d) Fourth, the Administrator will calculate each Participating Class Member's Settlement Ratio by dividing the number of Adjusted Settlement Workweeks belonging to that Participating Class Member by the Total Adjusted Settlement Workweeks for the entire Settlement Class; and
  - (e) Fifth, the Administrator will calculate each Participating Class Member's Individual Class Member Payment by multiplying that Participating Class Member's Settlement Ratio by the Net Settlement Amount.
2. Workweek/Calculation Disputes. The number of Settlement Workweeks and Adjusted Settlement Workweeks credited to you, based on C&K Trucking's records, as well as your estimated Individual Class Member Payment based on these records, are stated in the first page of this Notice. You may dispute these records by sending a letter to the Administrator. For a dispute to be timely submitted, it must be mailed to the Administrator at the address provided in Section 9 below and postmarked on or before [REDACTED]. Any dispute should explain the basis of the dispute, state the number of Settlement Workweeks, Adjusted Settlement Workweeks and/or calculation that you believe is correct, and attach any documentation reasonably available to support your dispute. (You should send copies of documents rather than originals because the documents will not be returned to you.) The Parties will confer to determine whether adjustments to the Class Member's Individual Class Member Payment is warranted. If the Parties are unable to reach an agreement as to a dispute, the Court will decide the outstanding issue. The Court's determination of the eligibility for and amount of any Individual Class Member Payment will be binding.

## 5. HOW WILL I GET PAID?

The Administrator will send, by U.S. mail, a single check to every Participating Class Member.

**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

## 6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You may exclude yourself from the Settlement ("opt out") by sending a letter to the Administrator **no later than** [REDACTED], which reasonably communicates your election to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Member Payments, but will preserve their rights

to personally pursue the claims asserted in this case against C&K Trucking.

To be valid, a Request for Exclusion must (a) be written; (b) state your name; (c) be signed by you; (d) identify the Action; (e) state that you have reviewed the Class Notice regarding the settlement of the Action and the consequences of requesting exclusion from it, and wish to be excluded from the settlement; and (f) be mailed to the Settlement Administrator at the address provided in Section 9 below.

You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you send the Administrator by mail a signed written Request for Exclusion that is postmarked **not later than** [REDACTED].

## **7. HOW DO I OBJECT TO THE SETTLEMENT?**

Participating Class Members (i.e. Class Members who do not opt out or request exclusion from the Settlement), may object to the Settlement or any aspect of it, including the requests for reasonable attorneys' fees and costs and the requests for service payments to the class representatives. However, only Participating Class Members have the right to object to the Settlement or these payments.

Before deciding whether to object, you may wish to see what Plaintiffs and C&K Trucking are asking the Court to approve. You may find information about the case as well as a complete copy of the Settlement Agreement on the Settlement Website maintained by the Administrator: [ADD URL]. You may also find Plaintiffs' Motion for Preliminary Approval that includes, among other things, the reasons why the proposed Settlement is fair. Additionally, by [ADD DATE] Plaintiffs will file a Motion for Reasonable Attorneys' Fees and Litigation Expenses and a Motion for Service Awards. These motions will state the attorneys' fees and costs, and service awards, requested and the reasons for the requests. They will be posted on the settlement website [ADD URL] for your review after [ADD DATE]. Additionally, upon reasonable request, Class Counsel will send you copies of these documents at no cost to you. Class Counsel's contact information is in Section 9 of this Notice.

If you decide to object, be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Additionally, for an Objection to be valid, it must (a) be written; (b) be signed by the Participating Class Member making the objection; (c) identify the name of the Participating Class Member making the objection; (d) identify the Action; (e) be mailed to the Administrator at the address provided in Section 9 of this Notice; and (f) be **postmarked on or before** [REDACTED].

Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

## **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You can, but don't have to, attend the Final Approval Hearing on \_\_\_\_\_ at \_\_\_\_\_ in Courtroom No. 1203 of the United States District Court, Northern District of Illinois, Eastern Division, located at 219 South Dearborn Street, Chicago, Illinois 60604. At the Hearing, the Judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend or hire a lawyer to attend.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [[ADD URL](#)] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

## **9. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything C&K Trucking and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at [[ADD URL](#)]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below. You may also review case and settlement documents on PACER (Public Access to Court Electronic Records) by going to [www.pacer.uscourts.gov](http://www.pacer.uscourts.gov) and entering in the Case Name, Case Number and District Court information shown at the top of this Notice.

### **Class Counsel:**

Joshua Konecky  
Sarah McCracken  
Schneider Wallace Cottrell Konecky LLP  
2000 Powell Street, Suite 1400  
Emeryville, CA 94608  
[jkonecky@schneiderwallace.com](mailto:jkonecky@schneiderwallace.com)  
[smccracken@schneiderwallace.com](mailto:smccracken@schneiderwallace.com)

Stacey Vucko  
VUCKO LAW LLP  
2208 Midwest Road, Suite 104  
Oak Brook, IL 60523  
[svucko@vuckolaw.com](mailto:svucko@vuckolaw.com)

### **Settlement Administrator:**

JND Legal Administration  
Email Address:  
Mailing Address:  
Telephone:

Fax Number:

**10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check.

**11. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address. The Administrator's contact information is in Section 9 above.

# EXHIBIT 2

## **COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL**

*BNVS Transport LLC, et al., v. C&K Trucking, LLC*

Case No. 1:20-CV-04305

United States District Court, Northern District of Illinois, Eastern Division

***The United States District Court for the Northern District of Illinois authorized this Notice.***

***Read it carefully!***

***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

A proposed class action settlement has been reached and preliminarily approved by the Court in a lawsuit that sought compensation, penalties and interest for alleged underpayments and chargebacks in the settlement statements of the owner operators contracting with C&K Trucking, LLC, in Illinois. C&K Trucking, LLC denies these allegations, and the Court has not found that C&K engaged in any wrongful conduct. The proposed class action settlement provides for monetary payments to the members of a "Class" defined as "all current or former owner-operators based in Illinois who signed one of Defendant C&K Trucking LLC's standardized Independent Contractor Agreements and provided services pursuant to that agreement(s) at any time from July 22, 2010, to July 29, 2022." You have received this notice because the records of C&K Trucking indicate that you and/or your business may be a member of this Class ("Class Member") and eligible to receive money from the proposed class action settlement.

You do **not** need to do anything to receive your share of the settlement. However, if you wish to opt-out of the settlement, you must submit a "Request for Exclusion" in accordance with the instructions in Section 6 of this Notice below. If you wish to Object to the settlement, you must follow the instructions in Section 7 of this Notice below.

Based on the records of C&K Trucking, and the distribution formula set forth in the proposed settlement, you are scheduled to receive an **Individual Class Member Payment of approximately \$\_\_\_\_\_**. This is an estimate and the actual amount you receive may be different depending on certain factors not presently known.

The above estimate is based on C&K Trucking's records showing that there were \_\_\_\_\_ weeks between July 22, 2010 and July 29, 2022, during which C&K Trucking issued you or your business one or more Settlement Statements for services provided to C&K Trucking, and that \_\_\_\_\_ of these weeks occurred between July 22, 2016 and July 29, 2022. The specific formula for calculating your workweeks and your resulting Individual Class Member Payment is explained in Section 4 of this Notice. If you believe that you should be credited with more weeks, you can submit a data dispute by the [ADD DATE] as explained in Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it.

**C&K Trucking will not retaliate against you for receiving an Individual Class Member Payment, or for objecting to or opting out of the proposed Settlement.**

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>You Don't Have to Do Anything to Participate in the Settlement</b>	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Member Payment in the amount estimated above. In exchange, you will give up your right to assert the claims against C&K Trucking that are covered by this Settlement (Released Claims).
<b>You Can Opt-out of the Settlement</b>  <b>The Opt-out Deadline is _____</b>	If you don't want to fully participate in the proposed settlement, you can opt-out of it by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer be eligible for an Individual Class Member Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of this Notice.
<b>Participating Class Members Can Object to the Settlement</b>  <b>Written Objections Must be Submitted by _____</b>	All Class Members who do not opt-out can object to any aspect of the proposed Settlement. See Section 7 of this Notice
<b>You Can Participate in the _____ Final Approval Hearing</b>	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost). Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
<b>You Can Challenge the Calculation of Your Workweeks/Pay Periods</b>  <b>Written Challenges Must be Submitted by _____</b>	The amount of your Individual Class Member Payment depends on the number of weeks between July 22, 2010, to July 29, 2022, in which C&K Trucking issued you or your business one or more Settlement Statements for services provided to C&K Trucking. The number of such weeks that C&K Trucking's records show for you is stated on the first page of this Notice. If you disagree with this number, you may submit a challenge. Any such challenge must be submitted by _____ to be timely and considered. See Section 4 of this Notice.



## **1. WHAT IS THE ACTION ABOUT?**

The named plaintiffs who filed this Action are two owner-operators that used to provide drayage transportation services to C&K Trucking, LLC, in Illinois. The Action accuses C&K Trucking of violating the Truth in Leasing Act, 49 U.S.C. § 14704(a)(2), and Illinois common law of breach of contract and fraud, by paying the owner operators less than the agreed-upon amounts for their runs and for not adequately disclosing the grounds for several categories of deductions or chargebacks made against their pay. Defendant C&K Trucking strongly denies violating any laws or failing to pay the contractually agreed-upon amounts. C&K Trucking further contends it complied with all applicable laws and contractual obligations.

## **2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

So far, the Court has made no determination whether C&K Trucking or Plaintiffs are correct on the merits. In the meantime, after conducting discovery, taking witness statements, and performing a legal analysis of the contracts and applicable law, Plaintiffs and C&K agreed to appear before an experienced mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and C&K Trucking have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, C&K Trucking does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) C&K Trucking has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) the settlement is in the best interests of the Class Members. The Court preliminarily approved the proposed settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

## **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

1. C&K Trucking Will Pay \$3,350,000.00 as the Gross Settlement Amount (Gross Settlement). C&K Trucking has agreed to deposit the Gross Settlement into an escrow account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Member Payments, Class Representative Service Payments, Class Counsel’s attorney’s fees and expenses, and the Administrator’s expenses. Assuming the Court grants Final Approval, C&K Trucking will fund the Gross Settlement not more than 7 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following

deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to one-third (1/3) of the Gross Settlement to Class Counsel for attorneys' fees and up to \$\_\_\_\_\_ for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$\_\_\_\_\_ each to the three Class Representatives as Service Payments for filing the Action, producing documents, answering interrogatories, having their depositions taken, and participating in the mediation sessions that resulted in the Settlement. A Class Representative Award will be the only monies Plaintiffs will receive other than their Individual Class Member Payments.
- C. Up to \$\_\_\_\_\_ to the Administrator for services administering the Settlement.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Member Payments to Participating Class Members using the formula described in Section 4 below.
- 4. Taxes Owed on Payments to Class Members. Each Participating Class Member's Individual Class Member Payment will be reported on an IRS 1099 Form.

Although Plaintiffs and C&K Trucking have agreed to this tax allocation, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Member Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will either be redistributed to the Class Members who cashed their checks and/or paid to a non-profit organization or foundation ("Cy Pres").
- 6. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. If the Settlement does not become Final for any of these reasons, the Agreement will be void such that C&K Trucking would not pay any money and Class Members would not

release any claims against C&K Trucking.

7. Administrator. The Court has appointed a neutral company, JND Legal Administration (the “Administrator”) to send this Notice, calculate and make payments, and mail and re-mail settlement checks and tax forms. The Administrator also will process Class Members’ Requests for Exclusion, Objections, and Disputes as to the number of Settlement Statement Workweeks or Adjusted Settlement Statement Workweeks, if any. The Administrator will also perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
8. Participating Class Members’ Release. After the Judgment is final and C&K Trucking has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by mailing a timely and valid Request for Exclusion to the Administrator in accordance with the instructions set forth in Section 6 below, you cannot sue, continue to sue, or be part of any other lawsuit against C&K Trucking or related entities for claims that have been resolved in this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were pleaded or could have been pleaded based on the facts alleged in Plaintiffs’ original Complaint and/or First Amended Complaint filed in this action, including but not limited to any claims related to compensation or deductions, which accrued between July 22, 2010 and July 29, 2022.

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Member Payments. The Administrator will calculate Individual Class Member Payments according to the following distribution formula:
  - (a) First, the Administrator will determine, for each Participating Class Member, the total number of weeks in the Class Period during which C&K Trucking issued that Participating Class Member one or more Settlement Statements based on the performance of services for Defendant C&K using one or more of the vehicles registered with that Class Member. This figure will be known as a Settlement Workweek;
  - (b) Second, the Administrator will count each Settlement Workweek between July 22, 2016 to July 29, 2022 as two Adjusted Settlement Workweeks; whereas each Settlement Workweek occurring between July 22, 2010 and July 21, 2016, will count as one Adjusted Settlement Workweek. The Parties have agreed to this formula as a fair and equitable approximation of the difference in potential value and risks of the claims at each time period;

- (c) Third, the Administrator will aggregate all the Adjusted Settlement Workweeks for all the Participating Class Members to arrive at the Total Adjusted Settlement Workweeks for the entire Settlement Class;
  - (d) Fourth, the Administrator will calculate each Participating Class Member's Settlement Ratio by dividing the number of Adjusted Settlement Workweeks belonging to that Participating Class Member by the Total Adjusted Settlement Workweeks for the entire Settlement Class; and
  - (e) Fifth, the Administrator will calculate each Participating Class Member's Individual Class Member Payment by multiplying that Participating Class Member's Settlement Ratio by the Net Settlement Amount.
2. Workweek/Calculation Disputes. The number of Settlement Workweeks and Adjusted Settlement Workweeks credited to you, based on C&K Trucking's records, as well as your estimated Individual Class Member Payment based on these records, are stated in the first page of this Notice. You may dispute these records by sending a letter to the Administrator. For a dispute to be timely submitted, it must be mailed to the Administrator at the address provided in Section 9 below and postmarked on or before [REDACTED]. Any dispute should explain the basis of the dispute, state the number of Settlement Workweeks, Adjusted Settlement Workweeks and/or calculation that you believe is correct, and attach any documentation reasonably available to support your dispute. (You should send copies of documents rather than originals because the documents will not be returned to you.) The Parties will confer to determine whether adjustments to the Class Member's Individual Class Member Payment is warranted. If the Parties are unable to reach an agreement as to a dispute, the Court will decide the outstanding issue. The Court's determination of the eligibility for and amount of any Individual Class Member Payment will be binding.

## 5. HOW WILL I GET PAID?

The Administrator will send, by U.S. mail, a single check to every Participating Class Member.

**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

## 6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You may exclude yourself from the Settlement ("opt out") by sending a letter to the Administrator **no later than** [REDACTED], which reasonably communicates your election to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Member Payments, but will preserve their rights

to personally pursue the claims asserted in this case against C&K Trucking.

To be valid, a Request for Exclusion must (a) be written; (b) state your name; (c) be signed by you; (d) identify the Action; (e) state that you have reviewed the Class Notice regarding the settlement of the Action and the consequences of requesting exclusion from it, and wish to be excluded from the settlement; and (f) be mailed to the Settlement Administrator at the address provided in Section 9 below.

You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you send the Administrator by mail a signed written Request for Exclusion that is postmarked **not later than** [REDACTED].

## **7. HOW DO I OBJECT TO THE SETTLEMENT?**

Participating Class Members (i.e. Class Members who do not opt out or request exclusion from the Settlement), may object to the Settlement or any aspect of it, including the requests for reasonable attorneys' fees and costs and the requests for service payments to the class representatives. However, only Participating Class Members have the right to object to the Settlement or these payments.

Before deciding whether to object, you may wish to see what Plaintiffs and C&K Trucking are asking the Court to approve. You may find information about the case as well as a complete copy of the Settlement Agreement on the Settlement Website maintained by the Administrator: [ADD URL]. You may also find Plaintiffs' Motion for Preliminary Approval that includes, among other things, the reasons why the proposed Settlement is fair. Additionally, by [ADD DATE] Plaintiffs will file a Motion for Reasonable Attorneys' Fees and Litigation Expenses and a Motion for Service Awards. These motions will state the attorneys' fees and costs, and service awards, requested and the reasons for the requests. They will be posted on the settlement website [ADD URL] for your review after [ADD DATE]. Additionally, upon reasonable request, Class Counsel will send you copies of these documents at no cost to you. Class Counsel's contact information is in Section 9 of this Notice.

If you decide to object, be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Additionally, for an Objection to be valid, it must (a) be written; (b) be signed by the Participating Class Member making the objection; (c) identify the name of the Participating Class Member making the objection; (d) identify the Action; (e) be mailed to the Administrator at the address provided in Section 9 of this Notice; and (f) be **postmarked on or before** [REDACTED].

Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

## **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You can, but don't have to, attend the Final Approval Hearing on \_\_\_\_\_ at \_\_\_\_\_ in Courtroom No. 1203 of the United States District Court, Northern District of Illinois, Eastern Division, located at 219 South Dearborn Street, Chicago, Illinois 60604. At the Hearing, the Judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend or hire a lawyer to attend.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [[ADD URL](#)] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

## **9. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything C&K Trucking and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at [[ADD URL](#)]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below. You may also review case and settlement documents on PACER (Public Access to Court Electronic Records) by going to [www.pacer.uscourts.gov](http://www.pacer.uscourts.gov) and entering in the Case Name, Case Number and District Court information shown at the top of this Notice.

### **Class Counsel:**

Joshua Konecky  
Sarah McCracken  
Schneider Wallace Cottrell Konecky LLP  
2000 Powell Street, Suite 1400  
Emeryville, CA 94608  
[jkonecky@schneiderwallace.com](mailto:jkonecky@schneiderwallace.com)  
[smccracken@schneiderwallace.com](mailto:smccracken@schneiderwallace.com)

Stacey Vucko  
VUCKO LAW LLP  
2208 Midwest Road, Suite 104  
Oak Brook, IL 60523  
[svucko@vuckolaw.com](mailto:svucko@vuckolaw.com)

### **Settlement Administrator:**

JND Legal Administration  
Email Address:  
Mailing Address:  
Telephone:

Fax Number:

**10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check.

**11. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address. The Administrator's contact information is in Section 9 above.

# EXHIBIT 3



**JOSHUA KONECKY**

Schneider Wallace Cottrell Konecky LLP  
2000 Powell Street, Suite 1400  
Emeryville, California 94608  
415.421.7100 (tel); 415.421.7105 (fax)  
jkonecky@schneiderwallace.com

**EDUCATION & FELLOWSHIPS**

**New York University School of Law, New York, NY, J.D., May 1995**

Arthur Garfield Hays Fellow  
Constitutional Law Teaching Assistant

**Haverford College, Haverford, PA, B.A., May 1990**

*Magna Cum Laude*  
Highest Honors in Major (Chemistry); Phi Beta Kappa Society; Phi Upsilon Society (National Chemistry Society)

**Fulbright Scholar, Buenos Aires, Argentina, Spring & Summer 2002**

*Lecturing and Research Scholar.* Presented lectures and seminars to lawyers, judges, scholars, students, government officials and community members regarding disability access and civil rights laws in the United States. Conducted interviews and research concerning laws, policies and experiences of people with disabilities in Argentina.

**Straus Institute for Dispute Resolution, Pepperdine University School of Law, August 2011**

Completion of 42 hours of training in Mediating the Litigated Case.

**LAW PARTNER**

**Schneider Wallace Cottrell Konecky LLP, San Francisco, CA**

**5/04-Present**

*Partner.* Manage class action litigation in federal and state court, including cases in wage and hour, disability access, employment discrimination, and other civil litigation; Daily Journal's top 75 employment attorneys in California (2013); "Super Lawyer" for Northern California (2011-2022); Finalist – Consumer Attorney of the Year, Consumer Attorneys of California (2010).

*Settlement Conference Officer.* Superior Court of California, County of San Francisco (October 2012-Present)

*Board Memberships:* Legal Aid at Work; Disability Rights Advocates Advisory Board

**Representative Cases**

*Julian, et al., v. Swift Transportation Co. Inc.* (Case No. CV-16-00576 PHX-ROS;) (D. Ariz.) (summary judgment granted on liability, 36 F.Supp. 3d 932, and summary judgment subsequently awarded on damages in collective action for unpaid minimum wage on behalf of trainees of a major trucking company; collective action settlement later reached for \$14,000,000).

*Helmick, et al., v. Air Methods Corporation* (Case No. RG13665373) (Superior Court of California) (Phase 2 court trial resulting in over \$60,000,000 in class-wide damages awarded to nurses and paramedics presenting claims for denial of daily overtime and meal and rest periods during 24-hr and 48-hr shifts; case eventually reached a settlement valued at over \$86.5 million for 494 class members, plus injunctive relief).

*Hose, et al., v Washington Inventory Service, Inc., et al.* (Case No. 14-cv-2869 WQH) (S.D. Cal.) (collective action settlement of \$7,015,516, for unpaid minimum wage, negotiated with alleged successor-in-interest company and bankruptcy estate of original employing entity, after named plaintiff and counsel petitioned U.S. Bankruptcy Trustee to establish a Committee of Unsecured Creditors, and after filing nearly 14,000 individual arbitrations based on the original employer's mandatory arbitration program).

*Judd, et al., v KeyPoint Government Solutions, Inc.* (Case No.: 18-cv-00327-RM-STV) (D. Col.) (collective action settlement under Fair Labor Standards Act of \$1,500,000 for unpaid overtime for approximately 330 background check investigators, approximately 300 of which were compelled to individual arbitration based on the defendant's mandatory arbitration agreement).

*Shaw, et al., v. AMN Services, LLC & Kaiser Foundation Hospitals* (Case No. 3:16-cv-02816 JCS) (N.D. Cal.) (class certification granted on contested motion brought on behalf of traveling nurses asserting claims for denial of overtime, meal periods, and rest breaks; class settlement later achieved for \$20,000,000).

*Bartoni, et al., v. American Medical Response* (Case No. RG08382130) (Superior Court of California) (final approval of class action settlement for \$17,000,000 on behalf of paramedics and dispatches asserting claims for denial of meal and rest periods during 12-hour shifts; settlement achieved after court granted contested motion for class certification).

*Ortiz, et al., v. Valley Relocation and Storage, et al.* (Case No. CGC-14-542925) (Superior Court of California, County of San Francisco) (class action trial on behalf of workers asserting that employer denied them employment rights and benefits by misclassifying them as "independent contractors" rather than "employees," culminating in final statement of decision after trial on employee status in favor of the plaintiff class).

*Villalpando v. Exel Direct, Inc.* (Case No. 3:12-cv-04137 JCS, 2015 WL 5179486) (N.D. Cal.) (final approval of class action settlement for \$13,500,000 on behalf of 386 individuals alleging denial of employment rights and benefits after court granted summary judgment in favor of the certified plaintiff class on the issue of whether they were misclassified as "independent contractors" instead of "employees").

*Mitchel v. Acosta Sales & Marketing* (Case No. 2:11-CV-01796 GAF (OPx) (C.D.Cal.) (final approval of collective and class action settlement of \$9,900,000 to resolve off-the-clock overtime claims on behalf of approximately 4,500 part time and 1,500 full time merchandisers under FLSA and California law).

*Perez v. rue21, Inc.* (Case No. CISCV167815) (Santa Cruz Superior Court) (final approval of class action settlement of \$2.75 million for missed meal and rest periods to retail store level employees working primarily on a part-time basis in approximately 30 stores in California).

*Ortiz v. Home Depot USA, Inc.* (Case No. 5:09-cv-03485-LHK) (N.D. Cal.) (final approval of innovative class action settlement achieved before significant litigation that created new procedures for providing sign language interpreters, accessible technology and effective interactive process to deaf workers).

*Sosa v. Dreyer's Grand Ice Cream, Inc.* (Case No. RG08424366) (Alameda County Superior Court) (final approval of class action settlement of \$13.5 million for unpaid donning and doffing time and noncompliant meal periods, resulting in average settlement awards of \$8,500 each for the nonexempt workers at Dreyer's facility in Bakersfield, California).

*Bond-Hatch v. Quest Diagnostics, Inc.* (Case No. CGC-06-450274) (San Francisco County Superior Court) (\$9,000,000 class settlement for off-the-clock work & missed breaks for approximately 4,000 phlebotomists).

*Hollands v. Lincare* (Case No. CGC07-465052) (San Francisco County Superior Court) (final approval granted for \$3.4 million class settlement providing average individual awards of over \$10,000 for approximately 200 class members based on alleged misclassification for overtime).

*Piper, et al. v. RGIS* (Case Nos. C-06-05778 and C-07-00032) (N.D. Cal.) (final approval of class settlement requiring injunctive relief and \$27 Million settlement fund to remedy off-the-clock and meal period violations on behalf of FLSA opt-in and Rule 23 opt out class covering approximately 62,000 class members).

*National Federation of the Blind v. Target* (Case No. C-06-01802 MHP) (N.D. Cal) (final approval of class action settlement to make target.com website accessible to legally blind consumers in the United States and establishing a damages fund of \$6 million).

*Carlson v. eHarmony* (Case No. BC 371958) (Los Angeles County Superior Court) (final approval of a class action settlement for Internet dating site to change policies and ensure equal access to gays and lesbians as well as establishing a damages fund of \$2 million to pay full statutory damages to class members under the Unruh Civil Rights Act).

*Turner et al., v. Association of American Medical Colleges (AAMC)* (Case No. RG-166148) (San Francisco Superior Court) (class action bench trial on behalf of individuals with learning disabilities seeking reasonable accommodations on the MCAT for medical school admissions, culminating in trial court's statement of decision in favor of the plaintiff class, but reversed on appeal based on holding that underlying statute did not provide right of action).

*Chau v. CVS RX Services, Inc.* (Case No. BC349224) (Los Angeles County Superior Court) (final approval of \$19.75 million class action settlement for failure to pay overtime to nearly 2,000 pharmacists).

*Satchell v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (final approval of \$55.5 million class action settlement addressing race discrimination within FedEx and covering nearly 24,000 class members).

*Herring v. Hewitt Associates, LLC* (Case No. 06-cv-00267) (D.N.J.) (final approval of \$4.9 million settlement for misclassification of approximately 1,000 benefits analysts).

*Bates v. United Parcel Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (final approval of national class action settlement providing accommodations and equal opportunities to deaf employees of UPS).

*Jimenez v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County Superior Court) (final approval of \$5.8 million class action settlement for miscalculation of overtime on behalf of nearly 2,000 hospital technology workers).

*Gomez v. Perot Systems Corp.* (Case No. CV0803337) (Alameda County Superior Court) (final approval of \$3 million class action settlement for failure to pay on-call time to approximately 1,300 hospital technical workers).

*Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (final approval of \$3.5 million class action settlement on behalf of a class of 113 flight nurses for improper on-duty meal periods and failure to pay overtime).

*Campos v. San Francisco State University*, C-97-02326 MCC (N.D. Cal) (final approval of class action settlement remedying disability access violations).

*Rogers v. AccentCare, Inc.* (Case No. RG05237683) (Alameda County Superior Court) (final approval of class action settlement for unpaid travel time on behalf of home caregivers).

*McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County Superior Court) (final approval of \$3.9 million class action settlement for unpaid drive time for nearly 900 Coca-Cola account managers).

*Portugal v. Macy's West, Inc.* (Case No. BC 324247) (Los Angeles County Superior Court) (final approval of class action settlement of \$3.25 million challenging misclassification of 154 security managers).

*Taormina v. Siebel Systems, Inc.* (Case No. RG05219031) (Alameda County Superior Court) (final approval of \$2.7 million class action settlement for misclassification of Siebel's 92 inside sales employees).

*Joseph v. The Limited, Inc.* (Case No. CGC 04-437118) (San Francisco County Superior Court) (final approval of \$450,000 class action settlement for failure to provide meal and rest periods to class of 180 employees of The Limited stores).

*Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final approval of \$375,000 class action settlement for failure to pay accrued vacation pay upon end of employment).

*DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County Superior Court) and *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB)) (final approval of \$15 million class action settlement for failure to pay more than 16,000 Sears drivers for all hours worked).

*McClain et al., v. Lufkin Industries, Inc.* (Civil Action No. 9:97-CV-063) (E.D. Texas) (Title VII class action challenging discrimination in promotions and compensation on behalf of African American and Latino employees, culminating in judgment in favor of the employees, later affirmed in part, reversed in part, and remanded for further proceedings. *See McClain v. Lufkin Industries*, 519 F.3d 264 (5th Cir. 2008)).

## **PUBLICATIONS**

Piller, N., Konecky, J., Joyner, L. "Power in Numbers." Forum, Employment Law Consumer Attorneys of California (2020).

Konecky, J. & Joyner, L. "How to resolve small damages claims: Arbitration and the new normal." Forum, Civil Rights Consumer Attorneys of California (2018).

Contributing Editor, Unruh Civil Rights Act Chapter of the California Practice Guide, Civil Procedure Before Trial, "Claims and Defenses," (2012).

Konecky, J. "Facts and Myths About Learning Disabilities and Standardized Testing: Private Enforcement of the Legal Right to Reasonable Testing Accommodations." The Verdict (Summer 2004).

Wolinsky, S., Konecky, J. & Aubrejuan, A. "The Legal Rights of Students with Learning Disabilities in the United States." In Vogel, Susan A. (Ed.), Learning Disabilities in Higher Education and Beyond, York Press (2003).

Konecky, J. & Wolinsky, S. "Through the Maze: Legal Issues and Disability Rights." Learning Disabilities: A Multi-Disciplinary Journal, Vol. 10, No. 2 (2000).

## **LECTURES & SEMINARS**

- Beard Class Action Conference, Mass Arbitrations, New York, NY** 9/20  
Panel speaker addressing procedure, practice and ethical issues as attorneys begin to litigate mass arbitrations instead of class and representative actions in court given the prevalence of arbitration agreements with pre-dispute class action waivers (MCLE event).
- Practising Law Institute, California Employment Law Update, San Francisco, CA** 9/14  
Panel speaker on case law development and procedural considerations for claims brought under the California Private Attorneys General Act of 2004 in federal and state court (MCLE event).
- Mediation and Settlement of Wage-and-Hour Disputes, San Francisco, CA** 10/13  
Moderator of panel discussing approaches and considerations for ensuring fair and reasonable class action settlements (MCLE event).
- ACI 18<sup>th</sup> National Forum on Wage & Hour Claims and Class Actions, New York, NY** 5/13  
Panel speaker addressing case law developments and practice points pertaining to class and collective actions in the wage and hour context (MCLE event).
- Class Action Litigation and Management, Los Angeles, CA** 4/13  
Panel speaker on “Changing Classes: Statistical Differences and Damages after Dukes” (MCLE event).
- Association of Business Trial Lawyers, Fresno, CA** 3/13  
Panel speaker with state appellate court justice, federal magistrate judge and practitioners providing update on class action law (MCLE event).
- Federal Practice Primer & Insights from the Bench, San Francisco, CA** 10/12  
Chair of panel comprised of federal court practitioners and federal magistrate judge addressing practice and procedure in federal court; sponsored by San Francisco Trial Lawyers Association (MCLE event).
- Wage & Hour 101, Costa Mesa, CA** 10/12  
Panel presentation on key aspects of State and federal wage and hour law; 25<sup>th</sup> Annual Employment Law Conference of the California Employment Lawyers Association (MCLE event).
- In House Counsel Webinar Series, Miller Law Group, San Francisco, CA** 06/12  
“*Dukes v. Wal-Mart*: One Year Later.” Webinar for in-house counsel on the status and changing landscape of class action litigation in both federal and state courts.
- Stanford University Law School, Palo Alto, CA** 03/08  
Guest lecturer on mediation strategies for Alternative Dispute Resolution law school class.
- Bridgeport Continuing Education, San Francisco, CA** 07/07  
“Wage and Hour Class Actions.” Presentation on case developments applicable to wage and hour class and collective actions in state and federal court (MCLE event).
- San Francisco Trial Lawyers Speaker Series, San Francisco, CA** 11/06  
“How to Spot a Wage and Hour Class Action.” Presentation on recent trends in wage and hour class actions and how to identify potential class actions from within one’s current case load. (MCLE event).



- Annual Employment Law Conference (CELA), Long Beach, CA** 9/06  
Moderator for panel addressing various legal and evidentiary issues in the representation of employees during minimum wage and overtime disputes (MCLE event).
- Developments in Wage and Hour Law (CELA), San Francisco, CA** 7/06  
Moderated and presented on panels to employment attorneys on developing areas in wage and hour law, sponsored by the California Employment Lawyers Association (MCLE event).
- Latest Developments in Wage and Hour Law (CELA), San Francisco, CA** 7/05  
Presentation to employment attorneys on developing areas in wage and hour law and cases pending before the Supreme Court, sponsored by the California Employment Lawyers Association (MCLE event).
- How to Spot a Wage and Hour Case – California Regional TLA Conference, Santa Barbara, Cal.** 7/05  
Presentation to California trial lawyers on wage and hour litigation in California (MCLE event).
- Critical Issues in Employment Litigation – Advanced Course of Study (CEB), SF, Cal.** 5/05  
Presentation to plaintiff and defense employment attorneys on developments in wage and hour law, including class actions, Proposition 64, meal and rest breaks, commissions, bonus plans and exemptions (MCLE event).
- Is Your Website Accessible? Legal Ethical and Technical Considerations in Creating Greater Access for People with Disabilities (BASF), San Francisco, California.** 5/04  
Seminar presented to attorneys and website designers regarding the legal requirements and disputes with respect to the accessibility of websites to people with disabilities, sponsored by the Disability Rights Committee of The Bar Association of San Francisco (MCLE event).
- Critical Issues in Employment Litigation – Advanced Course of Study (CEB), SF, Cal.** 5/04  
Presentation to plaintiff and defense employment attorneys on current trends in minimum wage and overtime class actions, sponsored by the Continuing Education of the Bar (MCLE event).
- Seminar in Public Administration and the Law, San Francisco State University, California** 3/04  
Taught class to graduate students in School of Public Administration addressing separation of powers and federalism, including a discussion of the same-sex marriage debate and recent Supreme Court cases concerning enforcement of the Americans with Disabilities Act against State governments.

## **OTHER LEGAL EXPERIENCE**

- Legal Aid Society of San Francisco, San Francisco, CA** 9/98-1/11  
*Volunteer Supervising Attorney.* Provide direction and supervision in employment and labor law to law students who serve as counselors to workers seeking legal advice and assistance on minimum wage and overtime, discrimination, disability and union issues.
- Saperstein, Goldstein, Demchak & Baller, Oakland, CA** 8/02-5/04  
*Associate.* Participated in all aspects of class action litigation on behalf of plaintiffs in federal and state court. Major practice areas were: race and gender employment discrimination; enforcement of minimum wage and overtime protections; and access for people with disabilities in public accommodations and government programs.

**Disability Rights Advocates, Oakland, CA**

**9/97-1/02**

*Staff Attorney and Skadden Public Interest Law Fellow.* Participated in all aspects of class action litigation in federal court seeking equal access and opportunities for people with disabilities. Major practice areas included: access to school facilities and educational programs; policies for reasonable accommodations and accurate assessments on admissions tests and professional screening exams; reasonable accommodations in the employment setting; and access to public accommodations.

**Law Clerk to the Honorable Lawrence K. Karlton, U. S. District Court, Sacramento, CA**

**9/95-8/97**

Federal clerkship involving all aspects of the civil docket and various criminal matters. Major tasks included: drafting orders, opinions, jury instructions and pretrial memoranda in civil and criminal matters; conducting extensive legal research; managing the civil docket; and supervising and teaching law students.

# EXHIBIT 4



# A Continuum of Care and a Network of Services



Misericordia offers a community of care that maximizes potential for persons with mild to profound developmental disabilities, many of whom are also physically challenged. By serving society's most vulnerable citizens, Misericordia also serves the families who want the best for them,

yet cannot provide it at home.

Through a spectrum of residential options on its 31-acre Chicago campus and in the community, and with a wide variety of programs, Misericordia currently serves more than 600 children and adults residentially, from diverse racial, religious and socio-economic backgrounds. Twenty percent of our residents either come from poverty families or have no families and are wards of the State. [Click here for our annual report.](https://www.misericordia.com/UserFiles/file/AnnualReport2017.pdf)

<https://www.misericordia.com/UserFiles/file/AnnualReport2017.pdf>

Misericordia is a Catholic Charity of the Archdiocese of Chicago with the mission of providing a quality of life for our residents. We are a Community of Believers joined together for this common purpose. Through Catholic values and



traditions, we strive to be a diverse and inclusive community that embraces those of all faiths as well as those with no religious tradition. All who believe in our mission are welcome into our Community of Believers.

Misericordia offers a continuum of care to meet their diverse needs and aspires for each individual to live as independently as possible in the highest level of community integration feasible. Residential settings include:

- CILAs (Community Integrated Living Arrangements for small groups in neighborhood homes outside Misericordia's main campus)
- On-campus apartments
- Group homes on-campus
- Skilled nursing residence



Misericordia residents are important citizens of the greater Chicago community. Some residents work regularly at Chicago businesses. Other businesses

outsource projects to be performed on-campus by Misericordia residents. Community volunteers bring their expertise to Misericordia. Residents regularly go on community excursions for social and recreational events. Misericordia strives to involve its residents in all feasible aspects of community living.

While Misericordia is operated by the Sisters of Mercy under the auspices of the Catholic Archdiocese of Chicago, which has generously provided the property upon which Misericordia stands, its programs, renovations and new buildings are made possible through private fundraising.

Misericordia receives support for operations from the Illinois Department of Human Services, the Illinois Department of Healthcare and Family Services, the Department of Children and Family Services and the Illinois State Board of Education.



Misericordia is a 501(c)(3) not-for-profit corporation providing help for those in need since 1921. With the support of affiliated groups, legislators and volunteers, and through the generosity of corporations, foundations, individuals and families, Misericordia will continue to work toward a bright future where persons with disabilities achieve maximum independence and realize their greatest potential - in an environment of dignity, challenge, respect and spirituality.

## ABOUT US

[Mission Statement \(/about/mission-statement/\)](#)

[Home Board of Directors and Key Leadership \(/about/board-and-key-leadership/\)](#)

[Foundation Board of Directors \(/about/foundation-board-of-directors/\)](#)

[Foundation \(/about/Foundation\)](#)

[Annual Reports and Newsletters \(/about/annual-reports-and-newsletters/\)](#)

[Admissions \(/about/admissions/\)](#)

[Career Opportunities \(/employment/career-opportunities/\)](#)

[Donor Privacy Policy \(/about/donor-privacy-policy/\)](#)

[Summary Notice of Privacy Practices \(/about/summary-notice-of-privacy-practices/\)](#)

[Contact Us / Directions \(/about/contact-us-directions/\)](#)

[Our Story \(/our-story/\)](#)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BNVS Transport LLC and MEIN & MEEN  
TRUCKING, INC., individually and on behalf of  
all others similarly situated,

Plaintiffs,

vs.

C&K TRUCKING, LLC,

Defendants.

Case No. 1:20-CV-04305

HON. JOHN ROBERT BLAKEY

HON. M. DAVID WEISMAN

**DATE:** October 20, 2022

**TIME:** 11:00 a.m.

**COURTROOM:** 1203

**JUDGE:** Hon. John Robert Blakey

**DECLARATION OF STACEY VUCKO IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF RULE 23 CLASS ACTION SETTLEMENT**

I, Stacey B. Vucko, declare as follows:

1. I am one of the attorneys of record for Plaintiff in the above-captioned case and have been licensed to practice law in the state of Illinois since 2008. I am familiar with the file, the documents, and the history related to this case. The following statements are based on my personal knowledge and review of the files. If called on to do so, I could and would testify competently thereto.

2. I am submitting this Declaration in support of Plaintiffs' motion for preliminary approval of the proposed class action settlement class under Federal Rule of Civil Procedure 23.

3. I am a member of the general and trial bars for the United States District Court for the Northern District of Illinois – Eastern Division. I have been a member of the Northern District of Illinois trial bar since 2013. Since the beginning of this case, I have been working together with my co-counsel, Joshua Konecky, Sarah McCracken, and James Bloom of Schneider Wallace Cottrell Konecky LLP.

4. Mr. Konecky has filed a separate declaration in support of the proposed class action settlement and conditional certification of a settlement class under Federal Rule of Civil Procedure 23. A copy of the proposed settlement agreement is attached to Mr. Konecky's declaration. Mr. Konecky's declaration also provides detail concerning the case background and procedural history, the terms and value of the proposed settlement agreement, and the proposed notice of settlement.

5. I have been co-counsel for Plaintiffs and the proposed plaintiff class throughout this case. I am the lead trial attorney for a busy civil rights and employment law firm in the Chicago suburbs in which I am a partner, Vucko Law LLP. I represent clients before the Equal Employment Opportunity Commission, Illinois Department of Human Rights, the Department of

Labor, and in state and federal court in cases involving violations of the U.S. Constitution, Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, the Equal Pay Act, the Pregnancy Discrimination Act, § 1981, § 1983, the Air 21 Act, the Surface Transportation Assistance Act and other state and federal employment and wage and hour laws.

6. My recent legal experience includes prosecuting a whistleblower retaliation case as first chair on behalf of an aircraft mechanic against a major commercial airline in a seven-day bench trial before the Department of Labor's Office of Administrative Law Judges.

7. I founded Vucko Law in 2015 with the goal of advancing human rights - particularly women's rights - in the workplace.

8. Before opening my own firm, I worked for a trial and litigation practice in Chicago where I refined my litigation skills under the guidance of a Fellow of the American College of Trial Lawyers. I have represented both individual and corporate clients prosecuting and defending matters before Illinois state and federal courts and administrative agencies in complex cases involving piercing the corporate veil allegations, consumer fraud, the Illinois Fraudulent Transfer Act, the Federal False Claims Act, employment law, common law conspiracy, breach of contract and quasi-contractual theories, environmental litigation, bankruptcy litigation, legal malpractice, trust disputes and personal injury claims.

9. A copy of my biography and my firm's information, which reflects my background, education and experience and the firm's practice areas, can be found on my law firm's website at [www.vuckolaw.com](http://www.vuckolaw.com).

10. In or about February and March, 2020, Valinda Stephens, Bernard Shurn, and Damien Muhammad contacted my office concerning their work at C&K Trucking, LLC. Ms.



Stephens and Mr. Shurn were working for C&K at the time through their small business, BNVS Transport LLC. Mr. Muhammad had also worked for C&K through his small business, Mein & Meen Trucking, Inc. I met with Messrs. Shurn and Muhammad and Ms. Stephens in person at my office and spoke with each of them on multiple occasions by phone for a period of time, in the aggregate, of approximately 7 attorney hours. Messrs. Shurn and Muhammad, Ms. Stephens and I also exchanged multiple email communications regarding their work for C&K and other background of their possible claims and related documentation. Ms. Stephens and Messrs. Shurn and Muhammad were concerned about ongoing underpayments, confusing and inadequately documented or explained deductions from their pay, and general problems with a lack of transparency in C&K's pay processes. I found their complaints compelling and got in contact with my co-counsel, with whom I have been working on this case ever since.

11. I have read the declaration Mr. Konecky submitted in connection with the motion for preliminary approval, which, as I mentioned, contains more detail concerning the case history and settlement. I concur with Mr. Konecky's assessment and analysis of the proposed settlement's value and terms as set forth in his declaration.

I declare under penalty of perjury under the laws of the State of Illinois and the United States of America that the foregoing is true and correct and is based upon my personal knowledge.

Executed on September 28, 2022 in Downers Grove, Illinois

/s/ Stacey Vucko

Stacey Vucko

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BNVS Transport LLC and MEIN & MEEN  
TRUCKING, INC., individually and on behalf of  
all others similarly situated,

Plaintiffs,

vs.

C&K TRUCKING, LLC,

Defendants.

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Case No. 1:20-CV-04305

HON. JOHN ROBERT BLAKEY

HON. M. DAVID WEISMAN

**DECLARATION OF JENNIFER M. KEOUGH OF JND LEGAL ADMINISTRATION IN**  
**SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
**SETTLEMENT**



I, Jennifer M. Keough, declare as follows:

1. I am the Chief Executive Officer (CEO) of JND Legal Administration LLC (“JND”), that handles the administration of class action settlements. This Declaration is based on my personal knowledge, as well as upon information provided to me by experienced JND employees and Counsel for the Plaintiffs and Defendants (“Counsel”), and if called upon to do so, I could and would testify competently thereto.

2. I have more than 20 years of legal experience creating and supervising Notice and Claims Administration programs and have personally overseen well over 500 matters.

3. JND is a legal administration services provider with headquarters located in Seattle, Washington. JND has extensive experience with all aspects of legal administration and has administered hundreds of class action settlements. As CEO, I am involved in all facets of JND’s operation, including monitoring the implementation of our notice and claims administration programs.

4. JND submits this declaration to describe the settlement administration services expected in this case, including the receipt, processing, and managing of Defendant’s Class List data, and formatting, proofing, printing, and mailing by First Class mail a nine-page self-mailer Class Notice to all Class Members at their addresses as contained in the Class List.

5. I have reviewed the proposed class action Settlement and draft of the proposed Settlement notice. I have familiarized myself with the parties’ agreed upon methods and procedures for providing notice to the Class. Based on my more than two decades of experience in settlement administration I can attest that these procedures are consistent with the best practices currently used for providing best practical notice to Class Members in class actions such as this one.

6. JND has been informed by counsel and the settlement documents that there are approximately 1,010 class members and 100,617 Total Settlement Workweeks during the Class Period. The Settlement provides that within 7 days of preliminary approval by the Court, the Defendant will provide JND with the Class List data in a Microsoft Excel spreadsheet. This will include the Class Members’ names, last-known mailing addresses, last known telephone

number(s), last known email address(es), Workweek counts, and other information pertinent to administering the Settlement. JND will keep the Class List data private and confidential, and use it only for purposes of Settlement administration as provided in the Settlement Agreement.

7. Prior to mailing the Class Notice, as set forth in the Settlement Agreement, all Class Member addresses will be run through the National Change of Address (NCOA) database.<sup>1</sup> JND will update the Class List with any new addresses obtained from the NCOA search. In addition, all Class Members' Class Notices that are returned undeliverable by the post office with a forwarding address will be re-mailed by JND to the forwarding addresses. Class Notices returned as undeliverable without a forwarding address will be skip-traced one time and re-mailed to all addresses obtained as a result of the skip tracing. JND will provide the parties with weekly status reports that will include, among other things, outgoing and incoming mail statistics regarding the Class Notice mailing, the receipt of any opt-outs, objections, and/or Workweek disputes.

8. JND will process, review, and decide all Class Member disputes concerning the Workweeks information estimated in their Class Notice, and will maintain all records concerning all such disputes.

9. JND will establish and maintain a toll-free number staffed with live operators who will be available to answer Class Member questions.

10. JND will also establish and maintain a dedicated website that will contain the class notice and other information pertaining to the Settlement.

11. JND will open and maintain a Qualified Settlement Fund (QSF) account for this case. JND will prepare and file annual tax returns for the QSF account. JND will perform monthly account reconciliations on the QSF account.

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<sup>1</sup> The NCOA database is the official United States Postal Service ("USPS") technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained in the database for 48 months.


12. JND will perform all calculations required by the Settlement Agreement, including using the Class List data to calculate each Class Member's net Settlement amount. Prior to mailing Settlement checks, JND will run the class list through the NCOA database again to obtain the discounted postal rate on the check mailing. JND estimates it will prepare, print, and mail Settlement checks with 1099s to approximately 1,010 Class Members. JND will process all undeliverable returned checks and will re-issue returned checks to Class Members as updated addresses are located through skip tracing or other research.

13. JND will electronically scan and preserve electronic copies of all incoming mail.

14. JND has estimated that fees and costs to perform all the above Settlement administration services to be \$54,309.

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct.

Executed on September 28, 2022, in Seattle, Washington.

A handwritten signature in black ink, appearing to read "Jennifer M. Keough", written over a horizontal line.

JENNIFER M. KEOUGH