

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

ANDREW BEISSEL, an individual, J&B
ENTERPRISES, INC., a Colorado
Corporation, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WESTERN FLYER EXPRESS, LLC,

Defendant.

Case No. CIV-21-903-R

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

COME NOW, Plaintiffs Andrew Beissel and J&B Enterprises, Inc. ("Plaintiffs"),
by and through their undersigned counsel, move this Court for an Order:

1. Granting preliminary approval of the Parties' Joint Stipulation of Settlement and Release of Class and Collective Action ("Settlement"), a true and correct copy of which is attached as Exhibit A to the Declaration of Carolyn H. Cottrell in support of this Motion;
2. For settlement purposes, preliminarily certifying the state law claims as a Fed. R. Civ. P. 23 class on behalf of the Settlement Class;
3. Preliminarily approving Plaintiff Andrew Beissel as Representative of the Class and as the Collective Representative of the FLSA Collective for purposes of the Settlement;

4. Preliminarily approving Schneider Wallace Cottrell Konecky LLP and the Law Offices of Robert S. Boulter as Class Counsel for the Class and the FLSA Collective;
5. Preliminarily approving CPT Group as Settlement Administrator and preliminarily approving the costs of the claims administration;
6. Preliminarily approving Class Counsel's request for attorneys' fees and costs;
7. Approving the Class Notice, a true and correct copy of which is attached to the Settlement as Exhibit 1;
8. Authorizing the Settlement Administrator to mail the approved Class Notice; and
9. Approving the proposed schedule and procedure for completing the final approval process as set forth in the Settlement.

Plaintiffs bring this Motion pursuant to Federal Rules of Civil Procedure 23 (e) and long-established precedent requiring Court approval for class action settlements and Fair Labor Standards Act settlements. This Motion is based on the accompanying Memorandum of Law, the Declaration of Carolyn H. Cottrell in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement, the attached Exhibits, and all other records, pleadings, and papers on file in this action. Pursuant to the terms of the Settlement, Defendant does not oppose this Motion.

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I. INTRODUCTION

This class and collective Action is brought on behalf of current and former truck drivers hauling products throughout the United States for Defendant Western Flyer Express, LLC (“WFX”). The Action is based on WFX’s alleged violations of the FLSA, Oklahoma consumer protection laws, and Federal trafficking statutes.

After two years of litigation and extensive arm’s-length negotiations between counsel, the Parties have reached a global settlement of the Action, memorialized in the proposed Joint Stipulation of Settlement and Release of Class and Collective Action (“Settlement” or “Settlement Agreement”).¹ Plaintiffs now seek preliminary approval of the Settlement as to the proposed Class and approval of the Settlement as to the Collective.

The Parties have resolved the claims of approximately 2,670 truck drivers, for a total non-reversionary settlement amount of \$4,900,000. With this proposed Settlement, the Parties are resolving claims unlikely to have been prosecuted as individual actions. The Settlement provides an excellent benefit to the Class and an efficient outcome in the face of expanding and highly risky litigation. The Settlement is fair, reasonable, and adequate in all respects, and Plaintiffs respectfully request that the Court grant the requested approval.

II. BACKGROUND

On December 7, 2020, Plaintiffs filed a class action complaint against WFX in the

¹ The Settlement is attached as **Exhibit A** to the accompanying Declaration of Carolyn H. Cottrell in Support of Plaintiff’s Motion for Preliminary Approval of Class and Collective Action Settlement (“Cottrell Decl.”).

Northern District of Oklahoma. *See* ECF No. 2. Plaintiffs alleged that WFX has misled and fraudulently induced its drivers into hauling products for WFX by, among other things, misrepresenting the income they would earn, and failing to disclose key information about WFX's driver program. *See id.* Based on these allegations, Plaintiffs alleged claims under the Oklahoma Consumer Protection Act, 15 Okla. St. §§ 751, et seq. ("OCA"), Oklahoma Deceptive Trade Practices Act, 78 Okla. St. §§ 52, et seq. ("ODTPA"), in addition to other related common law claims. *See id.*

Prior to filing its Answer to Plaintiffs' allegations, WFX brought a motion to dismiss and a motion to transfer venue. ECF Nos. 24, 25. The matter was opposed and fully briefed. ECF Nos. 26, 27. On September 14, 2021, the Court granted WFX's motion to transfer, and the matter was transferred to this Court. ECF No. 31, 32. Once venued in this Court, on October 1, 2021, the Court granted WFX's motion to dismiss Plaintiffs' claim under the ODTPA, but provided Plaintiffs leave to amend. ECF No. 36.

Plaintiffs filed an amended complaint on October 15, 2021, asserting the same causes of action, but adding additional allegations in support of the claims. ECF No. 37. WFX again moved to dismiss Plaintiff's claim under the ODTPA. ECF No. 41. The matter was opposed and fully briefed. ECF Nos. 50 – 56. On December 14, 2021, the Court granted WFX's motion to dismiss the ODTPA claim. ECF No. 57. Following the Court's exclusion of the ODTPA claims, WFX filed its Answer containing general and specific denials of Plaintiffs' allegations. ECF No. 59.

Shortly thereafter, the Parties began to discuss the possibility of settlement. ECF No. 64. The Parties agreed to exchange a wide variety of informal discovery to better

understand the relative strengths and weaknesses of the claims and defenses at issue, and scheduled a mediation for July 19, 2022, to take place before Michael Russell, an experienced and well-respected mediator. ECF No. 71.

During this time, Plaintiffs continued their own independent investigation into the claims at issue, and further investigated whether other potential claims were viable and should be asserted. Cottrell Decl., ¶ 13. Plaintiffs determined there was reasonable argument that WFX's independent contractor drivers were misclassified under the FLSA, and made the decision to pursue these claims. *Id.* Plaintiffs also determined that WFX's conduct could potentially violate federal trafficking statutes, and determined they would pursue claims under Title 18 of U.S. Code Section 1581 et seq. pertaining to debt servitude and/or peonage and involuntary servitude. *See id.*

After a full day of mediation, the Parties reached a tentative settlement on July 19, 2022. *Id.*, ¶ 14. In reaching this settlement, Plaintiffs relied on informal discovery provided by WFX, their own independent investigations, and evaluated the strengths and weaknesses of the claims then-pled in the operative first amended complaint, as well as claims under the FLSA and federal trafficking statutes, evaluating the risks and likelihood of success on both certification and merits issues pertaining to each claim. *Id.*, ¶¶ 12-14.

However, there were disputes on many key terms in the drafting of the long-form settlement agreement. *Id.*, ¶ 15. Between July 19, 2022 and December 14, 2022, the Parties committed time and effort virtually every week to achieve a mutually agreeable long-form settlement agreement, meeting, conferring, negotiating, and exchanging drafts of the agreement throughout the process. *Id.*

The Parties executed the full Settlement Agreement on December 14, 2022. *Id.*, ¶ 16. Pursuant to this Settlement Agreement and the Parties’ discussions during mediation, Plaintiffs filed a Second Amended Complaint on December 16, 2022, asserting claims under the FLSA and 18 U.S.C. 1581 *et seq.* ECF No. 79. WFX filed its answer to the Second Amended Complaint denying Plaintiffs’ allegations and asserting various affirmative defenses. ECF No. 80.

III. KEY TERMS OF SETTLEMENT

Under the Settlement, WFX will pay a non-reversionary Gross Settlement Amount of Four Million and Nine Hundred Thousand Dollars (“\$4,900,000.00”) to resolve this litigation. Settlement, ¶¶ I.20; III.1. This amount includes all payments to the Class and Collective Members; proposed attorneys’ fees and costs; proposed service award; the costs of settlement administration (estimated at \$21,500.00, *see* Cottrell Decl., ¶ 17); and any other obligation of WFX under this Settlement. *See* Settlement, ¶ III.1. The Net Settlement Amount, the amount distributed to Class Participants, is approximately \$3,120,166.63. Cottrell Decl., ¶ 18; *see* Settlement, ¶ I.23. This amount is the Gross Settlement Amount less costs of settlement administration, proposed attorneys’ fees and costs, and proposed service award. Settlement, ¶ I.23.

The entire Gross Settlement Amount will be disbursed pursuant to the terms of the Settlement, and none of it will revert to WFX. *Id.*, ¶ I.20. Other key terms of the Settlement include:

- Oklahoma Class: A portion of the Net Settlement Amount will be distributed to Oklahoma Class Members, who are defined as “All current and former individuals who provide(d) transportation services for WFX within the United States, who

entered into an Independent Contractor Agreement, or a similarly styled agreement, with WFX, from December 7, 2017 to July 19, 2022.” Settlement, ¶ I.5.

- FLSA Collective Members:² A portion of the Net Settlement Amount will be distributed to FLSA Collective Members, who are defined as “all current and former individuals who provided transportation services for WFX within the United States, between December 7, 2017 and July 19, 2022, who (1) entered into an Independent Contractor agreement with WFX (2) were classified as independent contractors, and (3) sign or cash the settlement check(s) they receive as a result of this settlement.” *Id.*, ¶ I.17.
- Notice of Settlement: The Settlement Administrator will send a Notice to all Class Members via U.S. mail. *Id.*, ¶¶ I.8, VI.2, Ex. 2 (Notice of Settlement). The Settlement Administrator will re-mail undeliverable mailings to those with a forwarding address, and further conduct skip-tracing or other computer searches to ensure an updated address is found for any further re-mailings. *Id.*, ¶ VI.2.
- Class Participants: Class Members do not have to submit claims to receive a settlement payment. *Id.*, ¶ VI.3 & VI.4. Each Class Member will have 60 days from the mailing of the Notice of Settlement to request for exclusion (opt-out) or object to the Settlement. *Id.*, ¶¶ VI.3-4.
- Released Claims: Class Participants will release all claims, whether known or unknown, that were alleged or, based on the allegations contained in the original, first amended, or second amended complaints, could have been alleged, on behalf of individuals who drove for WFX as an independent contractor from December 7, 2017 to July 19, 2022. *Id.*, ¶ I.30; X.1. The Released Claims include, but are not limited to, all wage and hour claims under the FLSA, 29 U.S.C. §§ 206, et seq., that were alleged, inferred, pled or could have been pled based on the factual allegations in the Second Amended Complaint, all claims for the unlawful sale of business opportunities under the Oklahoma Business Opportunity Sales Act, 71 Okla. Stat. §§ 801, et seq.; all claims for deceptive and unfair trade practices under the Oklahoma Consumer Protection Act, 15 Okla. Stat. § 752, et seq.; all claims for deceptive trade practices under the Oklahoma Deceptive Trade Practices Act, 78 Okla. Stat. § 52, et seq.; all claims for constructive fraud, fraud, misrepresentation, and negligent misrepresentation; and all claims under Title 18 of U.S. Code Section 1581 et seq. pertaining to debt servitude and/or peonage and involuntary servitude. *See id.*
- Released Parties: The Released Claims will apply to the Released Parties, including

² Oklahoma Class and FLSA Collective Members are collectively referred to as “Class Members.”

WFX and its present and former parent or holding companies, subsidiaries, divisions, affiliates of all kinds and degrees, successors, predecessors, related companies or joint ventures, and each of their present and former officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, representatives, consultants, administrators, trustees, general and limited partners, predecessors, successors and assigns. *Id.*, ¶ I.31.

- Appointment of Administrator: The Parties request that CPT Group be appointed to serve as Settlement Administrator, to undertake its best efforts to ensure that the Notice of Settlement and settlement checks are provided to the current addresses of Class Members and Class Participants, respectively, to provide weekly updates, to perform tax reporting, to create and maintain a settlement website, to create and maintain a toll-free telephone number to field inquiries, process opt-out requests, to calculate and distribute settlement payments, and to be available to respond to administrative queries. VI.1-7.
- Pro Rata Distribution: Each Class Participant (Class Members who do not validly opt-out of the Settlement) will receive a *pro rata* portion of the Net Settlement Amount based on the number of settlement shares they are assigned. Settlement, ¶¶ VII.2-3. Settlement Shares are based on the number of workweeks the individual worked compared to the total number of workweeks all Class Participants worked. *Id.*, ¶¶ VII.2-3. FLSA Collective Members will receive 1 settlement share per workweek (FLSA Workweeks). *Id.*, ¶ VIII.2.b. To reflect the applicable value of Oklahoma state law claims and federal trafficking claims, Class Members will receive: 2 settlement shares per workweek. *Id.* The total number of settlement shares for all Class Participants will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. *Id.*, ¶ VII.3.c. That figure will then be multiplied by each Class Participant's number of settlement shares to determine the Class Participant's *pro rata* portion of the Net Settlement Amount. *Id.*
- Tax Allocation: The Settlement provides that all individual settlement awards to Class Participants will be reported on an IRS Form 1099. *Id.*, ¶ III.4.
- Service Award: The Settlement provides that Plaintiffs will seek a service payment to Named Plaintiff Andrew Beissel, of \$25,000 (subject to Court approval) to compensate him for his time and effort in service of the Class, as well as in exchange for a general release. *Id.*, ¶¶ I.32, III.2, X.2. The proposed service award in the amount of \$25,000 for Plaintiff Beissel represents 0.51% of the Gross Settlement Amount.
- Attorneys' Fees and Costs: Class Counsel's attorneys' fees and litigation expenses are included in the Gross Settlement Amount. Settlement, ¶ IV.1. The Settlement provides that WFX does not oppose a fee application of up 33.33% of the Gross

Settlement Amount (i.e., \$1,633,170), plus reasonable out-of-pocket costs of up to \$100,000. *See id.*

- *Cy Pres*: Any funds still remaining after the 180-day check cashing period will be redistributed to Class Participants on a prorated basis, and any additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed funds prior to redistribution. Settlement, ¶ VII.8. Following this redistribution, any remaining funds will be paid via *cy pres* in equal portions to: (1) St. Christopher Truckers Relief Fund, (2) Meals for 18 Wheels, and (3) Truckers Final Mile, the Parties' agreed-upon *cy pres* beneficiaries. *Id.* These organizations bear a substantial nexus to the interests of the Class Members as they are all committed to supporting and aiding truck drivers.

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT AS TO THE CLASS AND APPROVAL OF THE SETTLEMENT AS TO THE COLLECTIVE

A. Legal Standard

Courts strongly favor settlement as a method for resolving disputes. *See Amoco Prod. Co. v. Fed. Power Comm'n*, 465 F.2d 1350, 1354 (10th Cir. 1972); *see also Sears v. Atchison, Topeka & Santa Fe Ry., Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984); *Trujillo v. Colo.*, 649 F.2d 823, 826 (10th Cir. 1981) (citing “important public policy concerns that support voluntary settlements”). This is especially true in complex class actions, as is the case here. *See Big O Tires, Inc. v. Bigfoot 4x4, Inc.*, 167 F. Supp. 2d 1216, 1229 (D. Colo. 2001). “[The] presumption in favor of voluntary settlement agreements is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1007 (D. Colo. May 19, 2014); *see also, Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980) (“In the class action context in particular, there is an overriding public interest in favor of settlement. . . .”).

Fed. R. Civ. P. 23 (e) requires judicial approval for any compromise of claims

brought on a class-wide basis. “Preliminary approval of a class settlement requires the Court to assess (1) whether the matter is suitable for certification as a class action under Rule 23 and (2) the overall fairness of the proposed settlement . . . [and] the adequacy of the notice the parties propose to send out.” *Gundrum v. Cleveland Integrity Servs.*, No. 17-CV-55-TCK-tlw, 2017 U.S. Dist. LEXIS 130255, at *13 (N.D. Okla. Aug. 16, 2017) (internal quotation marks and citation omitted). The “objective of the court’s inquiry at the preliminary approval stage is to determine whether to direct notice of the proposed settlement to class members, permit the opportunity for objections, and schedule a fairness hearing.” *Id.* (citing *Tripp v. Rabin*, No. 14-CV-2646-DDC-GEB, 2016 U.S. Dist. LEXIS 87691, 2016 WL 3615572, at *2 (D. Kan. July 6, 2016)). “Because preliminary approval is just the first step, courts apply a ‘less stringent’ standard than that at final approval.” *Tripp*, 2016 U.S. Dist. LEXIS 87691, at *6.

The standard for approval of a settlement is that the settlement is fair, adequate and reasonable to the class. *Pliego v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 128 (D. Colo. 2016). A trial court may certify a class when it determines the proposed class satisfies the prerequisites of Federal Rule of Civil Procedure 23 (a), and one of the requirements of Rule 23(b). *See Shook v. El Paso Cnty.*, 386 F.3d 963, 971 (10th Cir. 2004); *Tabor v. Hilti, Inc.*, 703 F.3d 1206 (10th Cir. 2013); *Gundrum*, 2017 U.S. Dist. LEXIS 130255, at *14 (citing *Pliego*, 313 F.R.D. at 128).

Plaintiffs now asks this Court to take the first step in the review process, and preliminarily approve the Class for settlement approval. Given the complexity of this litigation, the potential and continued risks if the Parties were to proceed, the Settlement

represents a favorable resolution of this Action and eliminates the risk that the Class might otherwise recover nothing.

B. The Court Should Conditionally Certify the Class for Settlement

The trial court may certify a class when it determines the proposed class satisfies the prerequisites of Federal Rule of Civil Procedure 23(a), and one of the requirements of Rule 23(b). *See Shook v. El Paso Cnty.*, 386 F.3d 963, 971 (10th Cir. 2004); *Tabor v. Hilti, Inc.*, 703 F.3d 1206 (10th Cir. 2013). In performing its analysis under Rule 23, the court “must accept the substantive allegations of the complaint as true[.]” *Midland Pizza, LLC v. Sw. Bell Tel. Co.*, 277 F.R.D. 637, 639 (D. Kan. 2011) (quoting *DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1194 (10th Cir.2010)).³

1. There Are Numerous Questions of Law and Fact Common to the Class

Rule 23(a)(2) requires that there be questions of law or fact common to the class. Rule 23(a)(2) does not require that plaintiffs establish that all facts or legal issues are common to the class. It requires only a single question of law or fact common to the class. *Anderson v. Boeing Co.*, 222 F.R.D. 521, 531 (N.D. Ok. 2004); *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1288 (10th Cir.1999). Because courts in Rule 23(b)(3) cases often apply the Rule 23(a)(2) commonality requirement and the 23(b)(3) predominance tests together,

³ To satisfy the numerosity requirement of Rule 23(a)(1), Plaintiffs must establish that the class is so numerous so as to make joinder impracticable. Fed. R. Civ. P. 23(a); *Trevizo v. Adams*, 455 F.3d 1155, 1162 (10th Cir. 2006). Here, there are approximately 2,670 Class Members. Numerosity is satisfied.

Plaintiffs discuss these common and predominating issues below. *See* NEWBERG ON CLASS ACTIONS, § 4.22 at 153 (4th ed. 2002).

2. Plaintiffs' Claims Are Typical of The Class

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” *Anderson*, 222 F.R.D. at 538. The interests and claims of the representative plaintiffs and class members need not be identical to satisfy typicality. *Anderson v. City of Albuquerque*, 690 F.2d 796, 800 (10th Cir.1982). Typicality is satisfied when a representative plaintiff’s claims stem from the same practice or course of conduct forming the basis of the class claims and is based upon the same legal or remedial theory. *Adamson v. Bowen*, 855 F.2d 668, 676 (10th Cir. 1988); *In re Motor Fuel Temperature Sales Practices Litig.*, 271 F.R.D. 221, 229 (D. Kan. 2010).

Plaintiffs’ claims are typical of the Class. Plaintiffs’ claims under Oklahoma consumer protection and federal trafficking statutes as well as the FLSA all arise from the same course of conduct and legal theory: WFX’s alleged misrepresentations and omissions concerning the driving opportunity, and the control WFX allegedly can exercise over drivers by making them financially dependent upon WFX. If this case did not settle, Plaintiffs would prove these claims on behalf of the Class by resort to the same evidence: WFX’s uniform contractual agreements; WFX’s alleged uniform misrepresentations and omissions concerning the driving opportunity, particularly those taking place during orientation; and the Class-wide testimony of WFX’s corporate witnesses. Plaintiffs’ claims are therefore typical.

3. Plaintiffs and Class Counsel Will Fairly and Adequately Protect the Interests of the Class

The final requirement of Rule 23(a) is adequacy of representation. “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187–88 (10th Cir. 2002).

There are no conflicts of interest or antagonism between Plaintiffs and their counsel and the Class. Plaintiffs and the absent Class Members have a shared interest in recovering the money to which they are entitled under the FLSA, Federal and Oklahoma consumer protection laws, and common laws. To represent themselves and the Class, Plaintiffs retained counsel highly experienced in class action litigation.⁴ Plaintiffs and their counsel have prosecuted, and will continue to prosecute, this action vigorously on behalf of the Class. Adequacy of representation requirement is satisfied.

C. Federal Rule of Civil Procedure 23(B) Requirements Are Satisfied

1. Questions of Law and Fact Common to Class Members Predominate Over Any and All Individual Issues

“The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). “It is not necessary that all of the elements of the claim entail questions of fact and law that are common to the

⁴ See Cottrell Decl., ¶¶ 5-7.

class, nor that the answers to those common questions be dispositive.” *Menocal v. GEO Group, Inc.*, 882 F.3d 905, 914-15 (10th Cir. 2018). “Put differently, the predominance prong asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *Id.* (quotations omitted). The Court must “characterize the issues in the case as common or not, and then weigh which issues predominate.” *Id.* The Court does so by “consider[ing] ... how the class intends to answer factual and legal questions to prove its claim—and the extent to which the evidence needed to do so is common or individual.” *Id.*

Plaintiffs’ Oklahoma claims are predominated by common questions of law and fact. For example, Plaintiffs’ OCPA claim alleges WFX’s representations and omissions concerning the driving opportunity constituted an “unlawful practice” under five subsections of Section 753. Even without the benefit of formal discovery, Plaintiffs can already identify the following claims of material misrepresentations and omissions that will apply to all Drivers: (1) alleged misrepresentations concerning the average miles per week Drivers can expect to receive; (2) alleged misrepresentations concerning the net income Drivers will realize; (3) alleged misrepresentations that Drivers will operate their own trucking business as independent contractors, when in fact, they are properly viewed as employees who are placed on perpetual standby without any predictable wage-earning opportunities; (4) alleged omissions concerning the near 200% turnover rate of the program; (5) alleged omissions concerning the significantly-less-than 1% completion rate of the program; (6) alleged omissions that significant portions of Drivers will owe WFX

money at the end of any given week; and (7) alleged omissions concerning the risks associated with the program.⁵

No single misrepresentation or omission forms the basis of Plaintiffs' theory of liability. Instead, WFX's alleged affirmative misrepresentations, omissions, and commonsense build upon one another to create the ultimate misrepresentation: WFX's driving opportunity simply does not provide a realistic chance for a career in the trucking business. This is a theory of liability that has recently been endorsed under virtually identical circumstances by federal district courts in Utah, Tennessee, and Oklahoma. *See Roberts v. C.R. England, Inc.*, 318 F.R.D. 457 (D. Utah 2017); *Huddleston v. John Christner Trucking, LLC*, 2020 U.S. Dist. LEXIS 15444 (N.D. Okla. Jan. 30, 2020); *Elmy v. Western Express, Inc.* 2021 U.S. Dist. LEXIS 139695 (M.D. Tenn. July 27, 2021).

⁵ Courts routinely explain that misrepresentations and omissions concerning potential income or other characteristics of a business opportunity are material and deceptive. *See, e.g., F.T.C. v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1203 (10th Cir. 2005); *F.T.C. v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009); *FTC v. Kitco of Nev., Inc.*, 612 F. Supp. 1282, 1291-92 (D. Minn. 1985) ("In particular, it is deceptive to misrepresent the benefits of a business opportunity."); *Makaeff v. Trump Univ., LLC*, No. 3:10-cv-0940-GPC-WVG, 2014 U.S. Dist. LEXIS 22392, at *24-25 (S.D. Cal. Feb. 21, 2014) ("the Court finds that the tightly orchestrated promotional campaign exposed class members to the alleged deceptive and misleading representations that are at issue here."); *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 491 (C.D. Cal. 2006) (finding common sense inference that no rational class member would have purchased annuities if adequate disclosure of facts had been made); *In re American Continental Corp./Lincoln Savings & Loan Securities Litigation*, 140 F.R.D. 425 (D. Ariz. 1992) ("[T]he gravamen of the alleged fraud is not limited to the specific misrepresentations made...It is the underlying scheme which demands attention. Each plaintiff is similarly situated with respect to it, and it would be folly to force each bond purchaser to prove the nucleus of the alleged fraud again and again.").

Simply, every Court to have considered this exact theory of liability in the lease operator context has found identical evidence warranted class certification.

Importantly, there are no individual issues of reliance under the OCPA. The OCPA does not require reliance to make out a claim. *See Horton v. Bank of Am., N.A.*, 189 F.Supp.3d 1286, 1291 (N.D. Okla. 2016). The OCPA does not even use the word “rely” or “reliance.” Nor does the language of the statute suggest such a showing is required to make out a claim. To the contrary, “[t]he Act does not specify when the representation must take place *or that the consumer rely upon the representation.*” *Murray v. D&J Motor Co.*, 958 P.2d 823, 832 (Okla. Civ. App. 1998). Under the OCPA, a “deceptive trade practice” can occur “before, during or after a consumer transaction is entered and may be written or oral.” *Id.*

That the OCPA does not broadly impose a reliance requirement is codified in the statute. The OCPA prohibits WFX from committing misrepresentations, omissions, or other practices that “have deceived or could *reasonably be expected to deceive or mislead a person* to the detriment of that person.” *See* 15 Okla. St. Ann. § 752 (13); 753 (20) (emphasis added). The OCPA does not require a person to have *in fact* been deceived. It is enough that a person “could reasonably be expected” to have been deceived to recover both damages and statutory penalties under the statute.

Another example is the OCPA’s catch-all prohibition for “unfair” practices. An “unfair trade practice” means any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.” *Id.* § 752 (14). Whether WFX’s alleged efforts to trick individuals into hauling

its goods by misrepresenting the nature of economic opportunity it was offering is an “unfair” practice can be determined without regard to whether Drivers relied upon a given misrepresentation or omission.

But even if a reliance requirement applied to some aspects of Plaintiffs’ OCPA claim, the result should be the same as *Huddleston* and *Roberts*: A “common sense inference of reliance” will apply under Tenth Circuit precedent. See *CGC Holdings Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1089 (10th Cir. 2014). As the Tenth Circuit explained in *CGC Holdings*, a “commonsense inference of reliance” is appropriate in cases where “circumstantial evidence of reliance can be found through generalized, classwide proof.” *Id.* at 1089. This commonsense inference of reliance applies “where the behavior of plaintiffs and the members of the class cannot be explained in any way other than reliance upon the defendant’s conduct.” *Id.* at 1089-90.

The question, then, will be whether the “behavior” of Plaintiffs and Class Members – i.e., their decision to join WFX’s program – could be explained away by reasons having nothing to do with whether WFX was offering a feasible career choice. To answer that question, this Court would be encouraged to look to the decisions in *Huddleston* and *Roberts*, which deal with this identical question in the lease operator context.

Like this case, *Roberts* involved a class of truck drivers who alleged C.R. England developed a fraudulent plan to induce thousands of people to enroll in its driving program by promising the “ability to earn a desirable income driving as an independent contractor.” *Roberts*, 318 F.R.D. at 467. The plaintiffs alleged they and other class members “were subjected to a misinformation campaign to convince them to lease trucks from the

Defendants and become independent contractor drivers affiliated with England. [...] But many soon found they could not earn a living as they had been led to believe, and were left debt-ridden.” *Id.*

Roberts held that an inference of reliance was warranted under this Court’s decision in *CGC Holdings*. *Roberts* explained that “[i]ndividuals relied on promises of economic opportunity when they” joined C.R. England’s program, and that these individuals “agreed to become independent contractors, operating under the assumption that the Driving Opportunity offered a feasible career choice.” *Id.* at 514. And while C.R. England mustered many reasons for “why” someone may have joined its program,⁶ *Roberts* correctly found that “common sense dictates that each class member’s reason for attending driving school and joining the independent contractor program was the belief that Defendants offered an income and mileage opportunity that would support a career.” *Id.* *Huddleston* relied on *Roberts* to come to the same conclusion in the lease operator case before it, explaining that “commonsense dictates that each class member’s reason’ for entering into an ICOA and Lease Agreement with JCT ‘was the belief that [JCT] offered an income and mileage opportunity that would support a career.’” *Huddleston v. John Christner Trucking, LLC*, 2020 U.S. Dist. LEXIS 15444 at 61 (N.D. Okla. Jan. 30, 2020); see also, *Elmy v. Western*

⁶ “[C]onjectural ‘individualized questions of reliance,’ which are ‘far more imaginative than real[,] ... do not undermine class cohesion and thus cannot be said to predominate for purposes of Rule 23 (b)(3).’” *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 122 (2d Cir. 2013) (quoting *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 470 (2013)).

Express, Inc. 2021 U.S. Dist. LEXIS 139695 (M.D. Tenn. July 27, 2021) (certifying identical theories of liability under Tennessee law).

2. A Class Action is Superior to Any Other Available Method for The Fair and Efficient Adjudication of the Controversy

The last prerequisite for class certification is that the class action be “superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). In making such a finding, courts have considered: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. See Fed. R. Civ. P. 23(b)(3)(A)-(D).

Management of this case as a class action would not impose such difficulty that individual actions would be a better way of resolving this controversy. There is no evidence that any Class Member has an interest in individually controlling the prosecution of their claims. Plaintiffs are not aware of any other wage and hour litigation pending against WFX involving the proposed Class. Given the common and predominate issues concerning the proper classification of Drivers, WFX’s alleged uniform misrepresentations and omissions to the Class, concentrating the litigation of these claims in this forum is desirable. Finally, because common questions of law and fact predominate, there will be no difficulties to be encountered in the management of a class action.

D. The Proposed Settlement is Fair, Reasonable, and Adequate, and Should Be Preliminarily Approved

The Tenth Circuit has identified four factors to determine whether a settlement is fair, reasonable, and adequate: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002)); *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). As demonstrated below, the Settlement satisfies each of the criteria and thus warrants this Court’s preliminary approval.

1. The Proposed Settlement Is the Product of Extensive Arm’s-Length Negotiations Between Experienced Counsel and Assisted by an Experienced Mediator

Where, as here, a settlement results from “arm’s length negotiations between experienced counsel after significant discovery [has] occurred, the Court may presume the settlement to be fair, adequate, and reasonable.” *Lucas*, 234 F.R.D. at 693; *see also* MANUAL FOR COMPLEX LITIG. (THIRD) § 30.42, at 238. This action has been litigated for approximately two years. During this time, Class Counsel has conducted substantial informal discovery, interviewed many drivers, performed intensive research of the laws applicable to the claims and defenses at issue, and received all the class-wide data and information needed for certification and merits issues – indeed, the same type of information used to certify identical claims in *Huddleston*.

Following dispositive motion practice on the pleadings, the Parties began settlement

discussions and negotiations, which were conducted at arm's length and with the assistance of a highly experienced mediator. Cottrell Decl., ¶¶ 29-40. The negotiation process was hard-fought and protracted over months *Id.* Plaintiffs submitted comprehensive mediation statements and preliminary damages studies, which were thoroughly prepared by Class Counsel and based on years of discovery, documents, data, research, and dozens of interviews. *Id.*

Courts in this Circuit have found settlements fairly and honestly negotiated where “[t]he completeness and intensity of the mediation process, coupled with the quality and reputations of the mediator, demonstrate a commitment by the [p]arties to a reasoned process for conflict resolution that took into account the strengths and weaknesses of their respective cases and the inherent vagaries of litigation.” *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 285 (D. Colo. 1997); *see also Horton v. Molina Healthcare, Inc.*, No. 17-cv-0266-CVE-JFJ, 2019 U.S. Dist. LEXIS 90377, at *2-3 (N.D. Okla. May 22, 2019) (finding a proposed class action settlement agreement fair and reasonable because, *inter alia*, it was “negotiated in good faith at arms' length between experienced attorneys familiar with the legal and factual issues of this case aided by an experienced and neutral third-party mediator”); *Ashley v. Reg'l Transp. Dist.*, 2008 U.S. Dist. LEXIS 13069, at *15-22 (D. Colo. 2008) (settlement fairly and honestly negotiated where the parties engaged in formal settlement mediation conference and negotiations over four months); *see also Marcus v. Kan. Dept. of Revenue*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002) (“When a settlement is reached by experienced counsel after negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable.”). The

Settlement is a product of serious, informed, and non-collusive negotiations among experienced counsel and the mediator, and warrants preliminary approval.

2. Serious Questions of Law and Fact Exist and the Value of an Immediate Recovery Outweighs the Mere Possibility of Future Relief after Protracted and Expensive Litigation

Numerous, serious questions of law and fact exist in this Action, all of which are the subject of considerable risk if this case were to continue to be litigated.⁷ Cottrell Decl., ¶¶ 29-40. For example, while Plaintiffs believe WFX misclassified its drivers, it cannot be denied that plaintiffs *rarely* succeed in prosecuting independent contractor misclassification cases under the FLSA – both as to certification and merits issues. *Id.* And of course, even if Plaintiffs succeeded on those fronts, misclassification is not inherently unlawful – wage and hour violations would still have to be proven. And because the FLSA exempts Class Members from overtime requirements and allows paid and unpaid time to be averaged together for minimum wage purposes, it is exceedingly difficult to prove damages, even if misclassification claims are both certified and proven on the merits.

Similarly, while Plaintiffs are confident in their ability to certify and prove claims under Oklahoma consumer protection statutes, the fact of the matter is these theories of liability are relatively new, and different Courts may come to different conclusions.

⁷ See also, *Wilkerson*, 171 F.R.D. at 285 (the value of an immediate recovery, the “monetary worth of the settlement”, “is to be weighed not against the net worth of the defendant, but against the possibility of some greater relief at a later time, taking into consideration the additional risks and costs that go hand in hand with protracted litigation.” (citing *Gottlieb v. Wiles*, 11 F.3d 1004, 1015 (10th Cir. 1993))).

Indeed, it is notoriously difficult to certify *nationwide* classes who would assert claims based on misrepresentations, because different class members often receive different – even if subtly – representations.

These are serious questions of law and fact that create great uncertainty in Class Members’ ability to recover anything. “The presence of such doubt tips the balance in favor of settlement because settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.” *McNeely v. Nat’l Mobile Health Care, LLC*, 2008 U.S. Dist. LEXIS 86741, at *31-41 (W.D. Okla. 2008) (citing *In re Qwest Commc’ns Int’l, Inc. Sec. Litig.*, 2006 U.S. Dist. LEXIS 71039, at *16-18 (D. Colo. 2006)).

Moreover, the complexity, uncertainty, additional expense, and likely duration of further litigation also favor preliminary approval of the Settlement. *See In re Motor Fuel Temperature Sales Practices Litig.*, 258 F.R.D. 671, 681 (D. Kan. 2009) (granting preliminary approval because, inter alia, “[t]he costs of continued litigation are high, and it is possible that plaintiffs could receive little or no pecuniary relief”); *Ashley*, 2008 U.S. Dist. LEXIS 13069, at *15-22. “The class will be well compensated, relatively speaking, and is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted.” *McNeely*, 2008 U.S. Dist. LEXIS 86741, at *31-41.

This Settlement represents not only a meaningful, immediate recovery for the Class, but also one without any risk or additional expenses of further litigation. Cottrell Decl., ¶¶ 29-40. This benefit must be considered to the risk that the Class may recover nothing after

certification proceedings, summary adjudication, appeals, contested trial, and most likely, further appeals, many years into the future, or that litigation would deplete funds available to satisfy a judgment. *See id.* These factors thus support preliminary approval of the proposed Settlement.

**3. The Parties Agree that the Settlement Is Fair and Reasonable,
Further Supporting Preliminary Approval**

“Counsel[‘s] judgment as to the fairness of the agreement is entitled to considerable weight.” *Childs v. Unified Life Ins. Co.*, No. 10-CV-23-PJC, 2011 U.S. Dist. LEXIS 138818, at *37 (N.D. Okla. Dec. 2, 2011) (quoting *Lucas*, 234 F.R.D. at 695 and *Marcus*, 209 F. Supp. 2d at 1183)). “In addition to considering the judgment of the parties with respect to the proposed settlement, the Court should also ‘defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs.’” *Johnson v. Tulsa*, 2003 U.S. Dist. LEXIS 26379, at *39 (N.D. Okla. 2003).

Here, Class Counsel and WFX’s counsel – law firms with great experience in complex class litigation, particularly in truck driver misclassification cases – have agreed to settle this Action after serious arms-length negotiation, extensive exchange of discovery, and many months of discussions. Cottrell Decl., ¶¶ 29-40. Class Counsel believes that the settlement amount is fair and reasonable in light of their extensive investigation, motion practice, the risks of continued litigation, and their overall experience. *Id.* Plaintiffs and Class Counsel further recognize the great expense and length of proceedings necessary to continue this litigation against WFX through formal discovery, certification, summary judgment, trial, and inevitable appeals. *Id.*

Based on Class Counsel’s estimates, the Gross Settlement Amount of \$4,900,000.00

represents a significant portion of the total calculated exposure at trial. *Id.* There are myriad ways to calculate economic damages in these types of cases, and all of them would have been the subject of substantial and costly economic expert discovery. *Id.* It is far from certain that the economic measure of damages for this claim that ultimately went to a jury – assuming the Class claims remained certified – would have reflected Plaintiffs’ “best case scenario.” *Id.* Nevertheless, class counsel estimates that WFX’s maximum potential exposure is no more than \$31,000,000.00. *Id.*, ¶ 33. In other words, even on Plaintiffs’ best day at trial, this settlement – at this early stage – represents over 15% of the calculated exposure at trial. *Id.*

Importantly, when comparing the settlement in this case to settlements in virtually identical cases that have been approved, it is clear that the settlement in this case is much more than reasonable and adequate: it is exceptional. Here, there are 2,670 Class Members, who will receive an average gross recovery of \$1,835.21. Cottrell Decl., ¶ 34. This amount *exceeds* the per-class member recovery obtained in *Huddleston*, a case that was litigated for six years, including dozens of motions, a successfully certified class and collective, and subsequent appeal. *Huddleston v. John Christner Trucking, LLC*, Case No. 4:17-cv-00549-GKF-FHM (N.D. Okla.) (settled for \$9,250,000 on behalf of 5,647 drivers, for a recovery of \$1,638 per class member). That Plaintiffs were able to obtain a greater per-class member recovery in this case than was obtained in the hard-fought *Huddleston* litigation confirms the settlement in this case is more than adequate.

Given the risks, delays, and uncertainty inherent in continued litigation, Plaintiffs and Class Counsel believe that the Settlement is fair and reasonable to avoid the cost and

uncertainty of continuing litigation. *Id.*, ¶¶ 29-40. The Settlement was further endorsed by the mediator. This factor thus supports the Court’s preliminary approval of the proposed Settlement. *See Lopez v. Santa Fe*, 206 F.R.D. 285, 292 (D.N.M. 2002) (“[the] trial court is entitled to rely upon the judgment of experienced counsel for the parties Indeed, the trial judge, absent fraud, collusion, or the like, should hesitate to substitute its own judgment for that of counsel.”).

4. The Court Should Grant Approval of the Settlement as to the Collective

The standard for approval of an action arising under the FLSA requires only a determination the proposed settlement is a “fair and reasonable resolution of a *bona fide* dispute over FLSA provisions.” *Pliego v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 127-125 (D. Colo. 2016) (citing *Lynn’s Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1354 (11th Cir. 1982)); *see also Lynn’s Food Stores, Inc.*, 679 F.2d at 1354 (recognizing courts rely on the adversarial nature of a litigated FLSA case resulting in settlement as indicia of fairness).

Under *Lynn’s Food Stores*, a district court may find that a proposed settlement agreement resolves a *bona fide* dispute when it “reflect[s] a reasonable compromise over issues, such as FLSA coverage or computation of back wages that are actually in dispute.” 679 F.2d at 1354. “Parties requesting approval of an FLSA settlement must provide the Court with sufficient information to determine whether a *bona fide* dispute exists”, such as, among others, a description of the dispute, plaintiff’s justification for the unpaid wages, and the employer’s justification for disputing the overtime wages. *Solis v. Top Brass, Inc.*, Civil Action No. 14-cv-00219-KMT, 2014 U.S. Dist. LEXIS 122502, at *4 (D. Colo. Sep.

3, 2014) (citing *Baker v. Vail Resorts Mgmt. Co.*, Civil Action No. 13-cv-01649-PAB-CBS, 2014 U.S. Dist. LEXIS 22812, 2014 WL 700096, at *1 (D. Colo. Feb. 24, 2014)).

Because the Tenth Circuit Court of Appeals has not definitively set out FLSA specific criteria to use when assessing the fairness and reasonableness of a proposed settlement agreement, some district courts have looked to the same factors used in evaluating the fairness of class action settlements under Fed. R. Civ. P. 23. *See Baker*, 2014 U.S. Dist. LEXIS 22812, at *5-6 (citing *Rutter & Wilbanks Corp.*, 314 F.3d at 1188); *but see, Lawson v. Procare CRS, Inc.*, No. 18-CV-00248-TCK-JFJ, 2019 U.S. Dist. LEXIS 1695, at *4, 10-11 (N.D. Okla. Jan. 4, 2019) (noting “the majority of districts” “have held that such approval [of FLSA settlements] is not necessary”). These factors are: (1) whether the parties fairly and honestly negotiated the settlement; (2) whether serious questions of law and fact exist which place the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *Id.*

Here, for the same reasons already addressed above, certification of the FLSA Collective and approval of the Settlement is warranted.⁸ The Settlement represents a *bona*

⁸ Conditional certification and approval of the federal trafficking claims is warranted for the same reasons discussed with respect to the FLSA claim. On a fundamental level, the federal trafficking claims revolve around whether WFX forced drivers into a state of indebted and/or financial servitude. A core contention in the FLSA and Oklahoma claims is that drivers were allegedly subject to WFX’s complete control, and only permitted to drive for WFX, with the looming threat of financial ruin if drivers did not obey WFX orders. This same core contention is at the heart of the federal trafficking claims. WFX denied these claims, outright. ECF No. 80.

fide dispute over whether FLSA Collective Members were actually misclassified and, as a result, were subject to wage and hour violations committed by WFX. The Settlement represents a fair and reasonable compromise of this *bona fide* dispute.

The Settlement also furthers the purpose of the FLSA. Once the settlement is found to be fair and reasonable, the Court may also determine whether the agreement serves (or undermines) the purpose of the FLSA. *Pliego v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 130 (D. Colo. 2016). The “prime purpose” in enacting the FLSA “was to aid the unprotected, unorganized and lowest paid of the nation’s working population; that is, those employees who lacked sufficient bargaining power to secure for themselves a minimum subsistence wage.” *Brooklyn Savings Bank v. O’Neil*, 324 U.S. 697, 707 n.18, 65 S. Ct. 895, 89 L. Ed. 1296 (1945). To help further its goals, the FLSA provides that an employee or multiple employees may bring an action “on behalf of himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b).

The Settlement represents a reasonable compromise of the risks faced by Plaintiffs and the FLSA Collective had this case proceeded to trial following protracted litigation and appeals. The Settlement also furthers the purposes of the FLSA by providing FLSA Collective Members with substantial recovery for their alleged unpaid overtime, that they may have otherwise been unable to recover. Importantly, all FLSA Collective Members will automatically receive a Settlement Award unless they exclude themselves from the Settlement, and will not release any claims unless they do so (thereby allowing each FLSA Collective Member to decide whether to participate in the Settlement or not). Because the settlement facilitates the FLSA and is a fair and reasonable resolution of a *bona fide*

dispute, it should be approved as reasonable.

5. The Proposed Notice is Reasonable

The Court must ensure that Class Members receive the best notice practicable under the circumstances of the case. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974). Procedural due process does not guarantee any particular procedure but rather requires only notice reasonably calculated “to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Rule 23 (e) (1) requires that the Court “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “Notice” in this context consists of both the form and manner in which Class Members will be notified of the Settlement and the final fairness hearing. *Id.* The notice must “fairly apprise . . . prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests.” *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 423 (6th Cir. 2012) (internal quotations omitted).

Here, the proposed Notice of Proposed Class and Collective Action Settlement and Hearing Date for Court Approval (“Notice”), attached as Exhibit 1 to the Settlement, and manner of distribution negotiated and agreed upon by the Parties are “the best notice practicable.” Cottrell Decl., ¶¶ 50-57; Fed. R. Civ. P. 23 (c) (2)(B). The proposed Notice fulfills the requirement of neutrality in class notices. *Id.* *See* Conte, NEWBERG ON CLASS ACTIONS, § 8.39 (3rd Ed. 1992). It summarizes the proceedings necessary to provide

context for the Settlement and summarizes the terms and conditions of the Settlement, including an explanation of how the Gross Settlement Amount will be allocated between the Plaintiffs, Class Counsel, the Settlement Administrator, and the Class Members, as applicable, in an informative, coherent and easy-to-understand manner, all in compliance with the Manual for Complex Litigation's recommendation that "the notice contain a clear, accurate description of the terms of the settlement." Cottrell Decl., ¶¶ 50-57; MANUAL FOR COMPLEX LITIGATION, Settlement Notice, § 21.312 (4th ed. 2004).

The Notice is written in plain and easily-understood language and clearly, fairly, and concisely describe the nature of the Action, the definition of the Class, the Class claims and issues, that Class Members may object and appear personally or enter an appearance through an attorney if desired, that the Court will exclude from the Class any member who requests exclusion, the binding effect of a class judgment on the Class Members and the releases, Class Counsel's contact information, the Settlement Administrator's contact information, the significant terms of the Settlement and the total amount WFX has agreed to pay the Class and the FLSA Collective, and the Court approval process, including Class Counsel's request for attorneys' fees and reasonable expenses, as well as for a service award on behalf of Plaintiff Beissel. *See* Settlement, Ex. 1; *see also*, Cottrell Decl., ¶¶ 50-57. All Class Members have been identified and the Notices will be mailed directly to each Class Member, appropriate and reasonable efforts will be made by the Settlement Administrator to update the contact information in the database and to search for any outdated addresses, and a settlement website will be available for Class Members to review all relevant settlement documents and contact information. *See*

Cottrell Decl., ¶¶ 50-57.

The proposed Notice thus fairly apprises Class Members of the Settlement’s terms, the schedule for future events and deadlines, and their legal rights in connection with the proceedings. *See, e.g., Gooch*, 672 F.3d at 423 (“When a class has settled its claims, ‘[t]he contents of a . . . notice are sufficient if they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, . . . that any class member may appear and be heard at the hearing,’ . . . and ‘information [about] the class members’ right to exclude themselves and the results of failure to do so.’” (internal citation omitted)); *Thacker v. Chesapeake Appalachia, L.L.C.*, 259 F.R.D 262, 272 (E.D. Ky. 2009) (finding that the proposed notice – similar to the notice proposed here – satisfied the requirements of Rule 23(c)(2)(B)). Because the proposed Notice clearly and concisely describe the terms of the Settlement and the awards and obligations for Class Members who participate, and because the Settlement Administrator will disseminate the Notice in a way calculated to provide notice to as many Class Members as possible, the Notice should be approved.

6. The Court Should Approve the Proposed Schedule

The Settlement contains the following proposed schedule, which Plaintiffs respectfully request this Court approve:

Activity	Deadline
Deadline for WFX to provide Settlement Administrator with the Class List	Within 14 days after the Court’s preliminary approval of the Settlement
Deadline for Settlement Administrator to mail the Notice of Settlement to Class Members	Within 28 days after the Court’s preliminary approval of the Settlement
Deadline for Class Members to postmark	60 days after the Settlement Administrator

Activity	Deadline
requests to opt-out or file objections to the Settlement (“Opt-Out Deadline”)	mails the Notice of Settlement
Deadline for Settlement Administrator to provide all counsel and the Court with a final report (a) the final pro rata portion of each Class Participant and (b) the final number of Opt-Outs	Within 10 days after the Opt-Out Deadline
Deadline for filing of Final Approval Motion	Within 30 days of the Opt-Out Deadline
Deadline for Settlement Administrator to provide all Parties’ counsel with a statement detailing the Settlement Administration Costs and the notice administration process	At least 7 days prior to the Court’s Final Approval and Fairness Hearing
Final Approval and Fairness Hearing	Within 120 days after the Preliminary Approval Date
Effective Date	The date when all of the following events have occurred: (a) this Stipulation has been executed by all Parties and by Class Counsel and Defense Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Class Members providing them with an opportunity to opt-out of the Settlement; (d) the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Class and approving this Stipulation; and (e) in the event there are written objections filed prior to the Final Approval and Fairness Hearing that are not later withdrawn, the later of the following events: when the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ, or other appellate proceeding has upheld the

Activity	Deadline
	Court's final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final and there is no further recourse by an appellant or objector who seeks to contest the Settlement. In the event that no objections are filed, the Effective Date shall be after steps (a) through (d) have been completed.
Deadline for WFX to remit the Gross Settlement Amount to the Settlement Administrator	Within 7 days after Effective Date
Deadline for Settlement Administrator to make payments under the Settlement to Class Participants, Plaintiff for the Service Award, Class Counsel for attorneys' fees and costs, and itself for Administration Costs	Within 14 days of the Effective Date
Deadline for Settlement Administrator to redistribute uncashed check funds to Class Participants	As soon as practicable after the 180-day check-cashing deadline for individual settlement payments after issuance
Deadline for Settlement Administrator to revert uncashed check funds to <i>cy pres</i> recipient	As soon as practicable after the 180-day check-cashing deadline for redistributed checks after issuance

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement as to the Class and approval of the Settlement as to the FLSA Collective, in accordance with the schedule set forth herein.

//

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Dated: January 6, 2023

Respectfully submitted,

/s/ David C. Leimbach

Carolyn H. Cottrell (admitted *pro hac vice*)

David C. Leimbach (admitted *pro hac vice*)

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Attorneys for Plaintiffs, the putative Class
and Collective

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the for the United States District Court, Western District of Oklahoma, by using the Court's Case Management/Electronic Case Filing (CM/ECF) system, on January 6, 2023.

I hereby attest that concurrence in the content of the attached document and authorization to file the attached document has been obtained from the other signatory indicated by a conformed signature (/s/) within the attached e-filed document.

Dated: January 6, 2023

Respectfully submitted,

/s/ David C. Leimbach

Carolyn H. Cottrell (admitted *pro hac vice*)

David C. Leimbach (admitted *pro hac vice*)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

ANDREW BEISSEL, an individual, J&B
ENTERPRISES, INC., a Colorado
Corporation, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WESTERN FLYER EXPRESS, LLC,

Defendant.

Case No. CIV-21-903-R

**DECLARATION OF CAROLYN H. COTTRELL IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

I, Carolyn Hunt Cottrell, hereby declare as follows:

1. I am an attorney at law duly licensed and in good standing to practice law in the courts of California (No. 166977) and am admitted to practice *pro hac vice* before the Court in this action. I am a member in good standing of the State Bar of California and am over the age of eighteen.

2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP (“SWCK”). SWCK specializes in class and collective litigation in state and federal court.

3. SWCK and the Law Offices of Robert S. Boulter represent Plaintiff Andrew Beissel d/b/a J&B Enterprises (“Plaintiff”) and the Class in this Action against Western Flyer Express, LLC (“Defendant” or “WFX”). I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class and Collective Action Settlement. I

am familiar with the file, the documents, and the history related to these cases. The following statements are based on my personal knowledge and review of the files. If called to do so, I could and would testify competently thereto.

4. A true and correct copy of the fully-executed Joint Stipulation of Settlement and Release of Class and Collective Action (the “Settlement Agreement” or the “Settlement”) is attached hereto as **Exhibit A**. The Notice of Proposed Class and Collective Action Settlement and Hearing Date for Court Approval (“Notice”) is attached to the Settlement as **Exhibit 1**.

QUALIFICATIONS, EXPERIENCE, AND EXPERTISE

5. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour class actions, as well as consumer and employment class actions. In November 2012, the Recorder listed the firm as one of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The 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. SWCK was founded by Todd Schneider in 1993, and I have been a member of the firm since 1995.

6. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases which have been certified and/or settled as class actions includes: *Huddleston v. John Christner Trucking, LLC*, (Case No. Case No. 4:17-cv-00549-GKF-FHM) (Northern District of Oklahoma) (final approval FLSA collective action, as well as Oklahoma and California Rule 23 classes, asserting identical claims as those at issue in this case on behalf of allegedly misclassified truck drivers); *Hazel v. Himage Solutions*,

Inc. (Case No. RG20068159) (Alameda County Superior Court, November 2, 2021) (final approval of a California Rule 23 class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements); *Pine Manor Investors, LLC v. FPI Management, Inc.* (Case No. 34-2018-00237315) (Sacramento County Superior Court, October 20, 2021) (final approval of a California Rule 23 class action settlement in action that alleged improper billing for workers compensation charges by an apartment complex management company); *Etcheverry v. Franciscan Health System, et al.* (Case No. 3:19-cv-05261-RJB-MAT) (Western District of Washington, October 19, 2021) (final approval of hybrid Fair Labor Standards Act and Washington class action); *Jean-Pierre, et al. v. J&L Cable TV Services, Inc.* (Case No. 1:18-cv-11499-MLW) (District of Massachusetts, August 31, 2021) (final approval of hybrid Fair Labor Standards Act and Massachusetts, New Hampshire, Maine, and Pennsylvania class action); *Amaraut, et al. v. Sprint/United Management Co.* (Case No. 19-cv-411-WQH-AHG) (Southern District of California, August 5, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Diaz, et al. v. TAK Communications CA, Inc., et al.* (Case No. RG20064706) (Alameda Superior Court, July 27, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Villafan v. Broadpectrum Downstream Services, Inc., et al.* (Case No. 3:18-cv-06741-LB) (Northern District of California, April 8, 2021) (final approval of hybrid Fair Labor Standards Act and California law class action settlement for failure to pay for all hours worked, failure

to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *Jones, et al. v. CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern District of California, June 1, 2020) (final approval of hybrid Fair Labor Standards Act and California, Washington, Illinois, Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements, under California law); *Soto, et al. v. O.C. Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Van Liew v. North Star Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary

business expenditures, waiting time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to California record keeping requirements, waiting time penalties, and failure to provide itemized wage statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due, failure to adhere to California record keeping requirements, and failure to provide adequate seating, under California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages, waiting time penalties, failure to provide itemized wage statements, and failure to pay undiscounted wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Chen, J.) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours

worked, failure to pay overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District of California) (final approval of class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clocker work, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final

approval of class action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements to retention specialists working for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a class of individuals with mobility disabilities denied access to various facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No.

CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to and for off-the-clock work by certified emergency medical technicians); *Espinosa, et al. v. National Beef, et al.* (Case No. ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San Francisco Superior Court) (final approval of class action settlement for

failure to provide meal and rest breaks to, and for off-the-clock work by, employees at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of class action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of California) (final approval of class action settlement for off-the-clock work by production-line employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County Superior Court) (final approval of class action settlement for missed meal and rest periods on behalf of hourly workers at Six Flags amusement parks); *Jimenez v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County Superior Court) (final approval of class action settlement for misclassification of hospital clerical workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224) (Los Angeles County Superior Court) (final approval of class action settlement for failure to pay overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (certified class action on behalf of flight nurses); *National Federation of the Blind v. Target* (Case No. C 06-01802 MHP) (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the United States who have tried to access Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination within FedEx); *Siddiqi v. Regents of the University of California* (Case No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf plaintiffs alleging disability access violations at the University of California);

Lopez v. San Francisco Unified School District (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in favor of plaintiffs in class action against school district for widespread disability access violations); *Campos v. San Francisco State University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class action in favor of disabled plaintiffs for widespread disability access violations); *Singleton v. Regents of the University of California* (Case No. 807233-1) (Alameda County Superior Court) (class settlement for women alleging gender discrimination at Lawrence Livermore National Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County Superior Court) (final approval of class action settlement for drive-time required of Coca-Cola account managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County Superior Court) (California statewide wage and hour "misclassification" class action resulting in a class-wide \$3.25 million settlement); *Taormina v. Siebel Systems, Inc.* (Case No. RG05219031) (Alameda County Superior Court) (final approval of class action settlement for misclassification of Siebel's inside sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County Superior Court) (final approval of class action settlement for failure to provide meal and rest periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final approval of 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 class action settlement for failure to pay Sears drivers for all hours worked); among many others.

7. Nearly my entire legal career has been devoted to advocating for the rights of individuals who have been subjected to illegal pay policies, discrimination, harassment and retaliation and representing employees in wage and hour and discrimination class actions. I have litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I manage many of the firm's current cases in these areas. I am a member of the State Bar of California, and have had memberships with Public Justice, the National Employment Lawyers Association, the California Employment Lawyers Association, and the Consumer Attorneys of California. I served on the Board of Directors for the San Francisco Trial Lawyers Association and co-chaired its Women's Caucus. I was named one of the "Top Women Litigators for 2010" by the Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned my Bachelor's degree from the University of California, and I am a graduate of the University of the Pacific, McGeorge School of Law.

CASE SUMMARY AND PROCEDURAL HISTORY

8. On December 7, 2020, Plaintiffs filed a class action complaint against WFX in the Northern District of Oklahoma. *See* ECF No. 2. Plaintiffs alleged that WFX has misled and fraudulently induced its drivers into hauling products for WFX by, among other things, misrepresenting the income they would earn, and failing to disclose key information about WFX's driver program. *See id.* Based on these allegations, Plaintiffs alleged claims under the Oklahoma Consumer Protection Act, 15 Okla. St. §§ 751, et seq.

(“OCPA”), Oklahoma Deceptive Trade Practices Act, 78 Okla. St. §§ 52, et seq. (“ODTPA”), in addition to other related common law claims. *See id.*

9. Prior to filing its Answer to Plaintiffs’ allegations, WFX brought a motion to dismiss and a motion to transfer venue. ECF Nos. 24, 25. The matter was opposed and fully briefed. ECF Nos. 26, 27. On September 14, 2021, the Court granted WFX’s motion to transfer, and the matter was transferred to this Court. ECF No. 31, 32. Once venued in this Court, on October 1, 2021, the Court granted WFX’s motion to dismiss Plaintiffs’ claim under the ODTPA, but provided Plaintiffs leave to amend. ECF No. 36.

10. Plaintiffs filed an amended complaint on October 15, 2021, asserting the same causes of action, but adding additional allegations in support of the claims. ECF No. 37. WFX again moved to dismiss Plaintiff’s claim under the ODTPA. ECF No. 41. The matter was opposed and fully briefed. ECF Nos. 50 – 56. On December 14, 2021, the Court granted WFX’s motion to dismiss the ODTPA claim. ECF No. 57.

11. Following the Court’s exclusion of the ODTPA claims, WFX filed its Answer containing general and specific denials of Plaintiffs’ allegations.

12. Shortly thereafter, the Parties began to discuss the possibility of settlement. ECF No. 64. The Parties agreed to exchange a wide variety of informal discovery to better understand the relative strengths and weaknesses of the claims and defenses at issue, and scheduled a mediation for July 19, 2022, to take place before Michael Russell, an experienced and well-respected mediator. ECF No. 71.

13. During this time, Plaintiffs continued their own independent investigation into the claims at issue, and further investigated whether other potential claims were viable

and should be asserted. Plaintiffs determined there was reasonable argument that WFX's independent contractor drivers were misclassified under the FLSA, and made the decision to pursue these claims. Plaintiffs also determined that WFX's conduct could potentially violate federal trafficking statutes, and determined they would pursue claims under Title 18 of U.S. Code Section 1581 *et seq.* pertaining to debt servitude and/or peonage and involuntary servitude.

14. After a full day of mediation, the Parties reached a tentative settlement on July 19, 2022. In reaching this settlement, Plaintiffs relied on informal discovery provided by WFX, their own independent investigations, and evaluated the strengths and weaknesses of the claims then-pled in the operative first amended complaint, as well as claims under the FLSA and federal trafficking statutes, evaluating the risks and likelihood of success on both certification and merits issues pertaining to each claim.

15. However, there were disputes on many key terms in the drafting of the long-form settlement agreement. Between July 19, 2022 and December 14, 2022, the Parties committed time and effort virtually every week to achieve a mutually agreeable long-form settlement agreement, meeting, conferring, negotiating, and exchanging drafts of the agreement throughout the process.

16. The Parties executed the full Settlement Agreement on December 14, 2022. Pursuant to this Settlement Agreement and the Parties' discussions during mediation, Plaintiffs filed a Second Amended Complaint on December 16, 2022, asserting claims under the FLSA and 18 U.S.C. 1581 *et seq.* ECF No. 79. WFX filed its answer to the

Second Amended Complaint denying Plaintiffs' allegations and asserting various affirmative defenses. ECF No. 80.

THE SETTLEMENT

Basic Terms of the Settlement

17. Under the Settlement, WFX will pay a non-reversionary Gross Settlement Amount of Four Million and Nine Hundred Thousand Dollars (“\$4,900,000.00”) to resolve this litigation. Settlement, ¶¶ I.20; III.1. This amount includes all payments to the Class and Collective Members; proposed attorneys' fees and costs; proposed service award; the costs of settlement administration (estimated at \$21,500.00), and any other obligation of WFX under this Settlement. *See* Settlement, ¶ III.1.

18. The Net Settlement Amount, the amount distributed to Class Participants, is approximately \$3,120,166.63. *See* Settlement, ¶ I.23. This amount is the Gross Settlement Amount less costs of settlement administration, proposed attorneys' fees and costs, and proposed service award. Settlement, ¶ I.23.

19. Approximately 2,670 Class Members are eligible to receive a portion of the Net Settlement Amount. The Class and Collective are defined as follows:

- Oklahoma Class: A portion of the Net Settlement Amount will be distributed to Oklahoma Class Members, who are defined as “All current and former individuals who provide(d) transportation services for WFX within the United States, who entered into an Independent Contractor Agreement, or a similarly styled agreement, with WFX, from December 7, 2017 to July 19, 2022.” Settlement, ¶ I.5.

- FLSA Collective Members:¹ A portion of the Net Settlement Amount will be distributed to FLSA Collective Members, who are defined as “all current and former individuals who provided transportation services for WFX within the United States, between December 7, 2017 and July 19, 2022, who (1) entered into an Independent Contractor agreement with WFX (2) were classified as independent contractors, and (3) sign or cash the settlement check(s) they receive as a result of this settlement.” *Id.*, ¶ I.17.

20. Class Participants will release claims under Oklahoma law, limited to those that were or could have been asserted, whether known or unknown, or arising out of or connected to facts, theories, and claims pled in the initial complaint, first amended complaint, and second amended complaint, that Class Participants hold or have held before the Effective Date (“Released Claims”). *Id.*, ¶ I.30; X.1. Plaintiffs and the FLSA Collective Members will also release any and all claims, known or unknown, under the FLSA, that were pled or could have been pled based on the factual allegations of the Complaint.

21. The Settlement provides that Plaintiffs will seek a service payment to Named Plaintiff Andrew Beissel, of \$25,000 (subject to Court approval) to compensate him for his time and effort in service of the Class, as well as in exchange for a general release. *Id.*,

¹ Oklahoma Class and FLSA Collective Members are collectively referred to as “Class Members.”

¶¶ I.32, III.2, X.2. The proposed service award in the amount of \$25,000 for Plaintiff Beissel represents 0.51% of the Gross Settlement Amount.

22. Class Counsel's attorneys' fees and litigation expenses are included in the Gross Settlement Amount. Settlement, ¶ IV.1. The Settlement provides that WFX does not oppose a fee application of up 33.33% of the Gross Settlement Amount (i.e., \$1,633,170), plus reasonable out-of-pocket costs of up to \$100,000. *See id.*

23. The Parties have agreed to use CPT Group to administer the Settlement, for total fees and costs currently estimated at \$21,500.00, which is to be paid out of the Gross Settlement Amount. Under the Settlement, CPT is to undertake its best efforts to ensure that the settlement checks and notice are provided to the current addresses of Class Members, to provide weekly updates, to perform tax reporting, to create and maintain a settlement website, to create and maintain a toll-free telephone number to field inquiries, process opt-out requests, to calculate and distribute settlement payments, and to be available to respond to administrative queries.

24. Settlement Administrator will send a Notice to all Class Members via U.S. mail. *Id.*, ¶¶ I.8, VI.2, Ex. 1 (Notice of Settlement). The Settlement Administrator will re-mail undeliverable mailings to those with a forwarding address, and further conduct skip-tracing or other computer searches to ensure an updated address is found for any further re-mailings. *Id.*, ¶ VI.2.

Allocations and Awards

25. Class Members do not have to submit claims to receive a settlement payment. *Id.*, ¶ VI.3 & VI.4. Each Class Member will have 60 days from the mailing of the Notice of Settlement to request for exclusion (opt-out) or object to the Settlement. *Id.*, ¶¶ VI.3-4.

26. Each Class Participant (Class Members who do not validly opt-out of the Settlement) will receive a *pro rata* portion of the Net Settlement Amount based on the number of settlement shares they are assigned. Settlement, ¶¶ VII.2-3. Settlement Shares are based on the number of workweeks the individual worked compared to the total number of workweeks all Class Participants worked. *Id.*, ¶¶ VII.2-3. FLSA Collective Members will receive 1 settlement share per workweek (FLSA Workweeks). *Id.*, ¶ VIII.2.b. To reflect the applicable value of Oklahoma state law claims and federal trafficking claims, Class Members will receive: 2 settlement shares per workweek. *Id.* The total number of settlement shares for all Class Participants will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. *Id.*, ¶ VII.3.c. That figure will then be multiplied by each Class Participant's number of settlement shares to determine the Class Participant's *pro rata* portion of the Net Settlement Amount. *Id.*

27. The Notices of Settlement will provide the estimated Settlement Award and number of workweeks for each Class Member, assuming full participation in the settlement. Settlement Award and eligibility determinations will be based on workweek information that WFX will provide to the Settlement Administrator.

28. Any funds still remaining after the 180-day check cashing period will be redistributed to Class Participants on a prorated basis, and any additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed funds prior to redistribution. Settlement, ¶ VII.8. Following this redistribution, any remaining funds will be paid via *cy pres* in equal portions to: (1) St. Christopher Truckers Relief Fund, (2) Meals for 18 Wheels, and (3) Truckers Final Mile, the Parties' agreed-upon *cy pres* beneficiaries. *Id.* These organizations bear a substantial nexus to the interests of the Class Members as they are all committed to supporting and aiding truck drivers.

THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

29. The Gross Settlement Amount is a negotiated amount that resulted from substantial arm's-length, non-collusive negotiations and significant investigation and analysis by Class Counsel. Class Counsel and WFX's counsel – law firms with great experience in complex class litigation, particularly in truck driver misclassification cases and consumer-related issues – have agreed to settle this action after months of negotiation under the guidance of a respected mediator.

30. Following dispositive motion practice on the pleadings, the Parties began settlement discussions and negotiations, which were conducted at arm's length and with the assistance of a highly experienced mediator. The negotiation process was hard-fought and protracted over months. Plaintiffs submitted comprehensive mediation statements and preliminary damages studies, which were thoroughly prepared by Class Counsel and based on years of discovery, documents, data, research, and dozens of interviews.

31. The Parties engaged in extensive formal and informal discovery that have enabled Class Counsel to assess the claims and potential defenses in this action. Class Counsel was able to accurately assess the legal and factual issues that would arise if the cases proceeded to trial(s). In addition, in reaching this Settlement, Class Counsel relied on their substantial litigation experience in similar wage and hour class and collective actions. Class Counsel's liability and damages evaluation was premised on a careful and extensive analysis of the effects of WFX's independent contractor operator agreements, lease agreements, and other policies and practices. Ultimately, Plaintiffs used this information and discovery to fairly resolve the litigation.

32. Class Counsel believes that the settlement amount is fair and reasonable in light of their extensive investigation, the risks of continued litigation, the amounts obtained for Class Members, and their overall experience.

33. Based on Class Counsel's estimates, the Gross Settlement Amount of \$4,900,000.00 represents a significant portion of the total calculated exposure at trial. There are myriad ways to calculate economic damages in these types of cases, and all of them would have been the subject of substantial and costly economic expert discovery. It is far from certain that the economic measure of damages for this claim that ultimately went to a jury – assuming the Class claims remained certified – would have reflected Plaintiffs' "best case scenario." Nevertheless, class counsel estimates that WFX's maximum potential exposure is no more than \$31,000,000.00. In other words, even on Plaintiffs' best day at trial, this settlement – at this early stage – represents over 15% of the calculated exposure at trial.

34. Importantly, when comparing the settlement in this case to settlements in virtually identical cases that have been approved, it is clear that the settlement in this case is exceptional. Here, there are 2,670 Class Members, who will receive an average gross recovery of \$1,835.21. This amount *exceeds* the per-class member recovery obtained in *Huddleston*, a case that was litigated for six years, including dozens of motions, a successfully certified class and collective, and subsequent appeal. *Huddleston v. John Christner Trucking, LLC*, Case No. 4:17-cv-00549-GKF-FHM (N.D. Okla.) (settled for \$9,250,000 on behalf of 5,647 drivers, for a recovery of \$1,638 per class member). That Plaintiffs were able to obtain a greater per-class member recovery in this case than was obtained in the hard-fought *Huddleston* litigation confirms the settlement in this case is more than adequate.

35. In an effort to ensure fairness, the Parties have agreed to allocate the settlement proceeds amongst Class Members in a manner that recognizes that amount of time that the particular Driver worked for WFX in the applicable limitations period. The allocation method, which is based on the number of workweeks, will ensure that longer-tenured Drivers receive a greater recovery.

36. Numerous, serious questions of law and fact exist in this Action, all of which are the subject of considerable risk if this case were to continue to be litigated. For example, while Plaintiffs believe WFX misclassified its drivers, it cannot be denied that plaintiffs *rarely* succeed in prosecuting independent contractor misclassification cases under the FLSA – both as to certification and merits issues. And of course, even if Plaintiffs succeeded on those fronts, misclassification is not inherently unlawful – wage

and hour violations would still have to be proven. And because the FLSA exempts Class Members from overtime requirements and allows paid and unpaid time to be averaged together for minimum wage purposes, it is exceedingly difficult to prove damages, even if misclassification claims are both certified and proven on the merits.

37. Similarly, while Plaintiffs are confident in their ability to certify and prove claims under Oklahoma consumer protection statutes, the fact of the matter is these theories of liability are relatively new, and different Courts may come to different conclusions. Indeed, it is notoriously difficult to certify *nationwide* classes who would assert claims based on misrepresentations, because different class members often receive different – even if subtly – representations.

38. These are serious questions of law and fact that create great uncertainty in Class Members' ability to recover anything. Moreover, the complexity, uncertainty, additional expense, and likely duration of further litigation also favor preliminary approval of the Settlement.

39. This Settlement represents not only a meaningful, immediate recovery for the Class, but also one without any risk or additional expenses of further litigation. This benefit should be considered to the risk that the Class may recover nothing after certification proceedings, summary adjudication, appeals, contested trial, and most likely, further appeals, many years into the future, or that litigation would deplete funds available to satisfy a judgment.

40. Given the risks, delays, and uncertainty inherent in continued litigation, Plaintiffs and Class Counsel believe that the Settlement is fair and reasonable to avoid the

cost and uncertainty of continuing litigation. The Settlement was further endorsed by the mediator.

SERVICE AWARD

41. The enhancement payment of up to \$25,000 for Plaintiff Beissel is intended to compensate him for a broader release and for the critical role he played in this case, and the time, effort, and risks he undertook in helping secure the result obtained on behalf of the Class Members.

42. In agreeing to serve as Class and Collective representative, Plaintiff formally agreed to accept the responsibilities of representing the interests of all Class Members.

43. WFX indicated it does not oppose the requested payments to the Plaintiff as a reasonable service award.

ATTORNEYS' FEES AND COSTS

44. In their fee motion to be submitted with their final approval papers, Class Counsel will request up to 33.33% of the Gross Settlement Amount, (i.e., \$1,633,170), plus reasonable out-of-pocket costs of up to \$100,000. Class Counsel will provide their updated lodestar information with their fee motion, which will demonstrate the reasonableness of Class Counsel's rates. One-third of a global class fund is a standard fee request in the Tenth Circuit and Oklahoma District Courts.

45. In this case, given the excellent results achieved, this standard one-third fee is warranted. There was no guarantee of compensation or reimbursement. Rather, counsel undertook all the risks of this litigation on a completely contingent fee basis. These risks were front and center. Defendant's vigorous and skillful defense further confronted Class

Counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in the case. Nevertheless, Plaintiffs and Class Counsel committed themselves to developing and pressing Plaintiffs' legal claims to enforce the Drivers' rights and maximize the class and collective recovery. During the litigation, counsel had to turn away other less risky cases to remain sufficiently resourced for this one.

46. Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects that his or her compensation will be significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims will be better able to obtain qualified counsel.

47. For these reasons, Class Counsel respectfully submits that a one-third recovery for fees is modest and appropriate. The lodestar amount will increase with preparation of the final approval papers, preparation and attendance at remaining hearings, correspondence and communications with Class Members, and settlement administration

and oversight.

48. Class Counsel also requests reimbursement for their litigation costs.

49. The fee and costs award should be preliminarily approved as fair and reasonable.

THE NOTICE OF SETTLEMENT AND RELATED ADMINISTRATION

50. The Notice of Settlement, attached as **Exhibit 1** to the Settlement Agreement, and manner of distribution negotiated and agreed upon by the Parties are “the best notice practicable.”

51. All Class Members have been identified and the Notice of Settlement will be mailed directly to each Class Member. In addition, the Parties will provide a settlement website that provides a generic form of the Notice, the Settlement Agreement, and other case related documents and contact information.

52. The proposed Notice fulfills the requirement of neutrality in class notices. It summarizes the proceedings necessary to provide context for the Settlement Agreement and summarizes the terms and conditions of the Settlement, including an explanation of how the settlement amount will be allocated between Plaintiff Beissel, Class Counsel, the Settlement Administrator, and the Class Members, in an informative, coherent and easy-to-understand manner, all in compliance with the Manual for Complex Litigation’s recommendation that “the notice contain a clear, accurate description of the terms of the settlement.”

53. The Notice clearly explains the procedures and deadlines for requesting exclusion from the Settlement, objecting to the Settlement, the consequences of taking or

foregoing the various options available to Class Members, and the date, time and place of the Final Approval Hearing. The Notice clarifies that the failure to submit a written objection may be excused upon a showing of good cause. Pursuant to Rule 23(h), the proposed Class Notice also sets forth the amount of attorneys' fees and costs sought by Plaintiffs, as well as an explanation of the procedure by which Class Counsel will apply for them. The Class Notice clearly states that the settlement does not constitute an admission of liability by WFX. It makes clear that the final settlement approval decision has yet to be made.

54. Furthermore, reasonable steps will be taken to ensure that all Class Members receive the Notice. Before mailing, WFX will provide to the Settlement Administrator a database that contains the names, last known addresses, and social security numbers of each Class Member, along with the applicable number(s) of Workweeks for calculating the respective settlement shares. The Notices of Settlement will be sent by United States Mail. The Settlement Administrator will make reasonable efforts to update the contact information in the database using public and private skip tracing methods. Within 7 days of receipt of the Class List from WFX, the Settlement Administrator will mail the Notices of Settlement to each Class Member.

55. With respect to Notices returned as undeliverable, the Settlement Administrator will re-mail any Notices returned to the Settlement Administrator with a forwarding address within three business days following receipt of the returned mail. If any Notice is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator will undertake reasonable efforts to search for the correct

address, and will promptly re-mail the Settlement Notice to any newly found address.

56. Class Members will have 60 days from the mailing of the Notices of Settlement to opt-out or object to the Settlement. Any Class Member who does not submit a timely request to exclude themselves from the Settlement will be deemed a Class Participant whose rights and claims are determined by any order the Court enters granting final approval, and any judgment the Court ultimately enters in the case.

57. Administration of the Settlement will follow upon the Court's issuance of final approval of the Settlement. The Settlement Administrator will provide Class Counsel and WFX's Counsel with a report of all Settlement payments at least 7 days prior to the Court's Final Approval and Fairness Hearing. Because the proposed Notice of Settlement clearly and concisely describe the terms of the Settlement and the awards and obligations for Class Members who participate, and because the Notice will be disseminated in a way calculated to provide notice to as many Class Members as possible, the Notice of Settlement should be approved.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and is based on my own personal knowledge.

Executed this 6th day of January, 2023, in San Rafael, California.

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

ANDREW BEISSEL, an individual, J&B
ENTERPRISES, INC., a Colorado
Corporation, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

WESTERN FLYER EXPRESS, LLC,

Defendant.

Case No. CIV-21-903-R

**JOINT STIPULATION OF SETTLEMENT AND RELEASE OF CLASS AND
COLLECTIVE ACTION**

This Joint Stipulation of Settlement and Release of Class and Collective Action is made and entered into by Plaintiffs, Andrew Beissel, an individual, J&B Enterprises, Inc., a Colorado Corporation, individually, and on behalf of others similarly situated (“Plaintiffs”), as defined below, and Defendant, Western Flyer Express, LLC (“WFX”), on the other hand. This Stipulation is subject to the approval of the Court pursuant to Fed. R. Civ. P. 23(c) and is made for the sole purpose of attempting to consummate settlement of certain claims in this class and collective action on a classwide and collective basis subject to the following terms and conditions.

I. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Stipulation are not specifically defined below, but are defined elsewhere in this Stipulation, they are incorporated by reference into this definition section.

1. **Action.** “Action” shall mean the civil action entitled *Andrew Beissel, J&B Enterprises, Inc., a Colorado Corporation, individually and on behalf of all others similarly situated, v. Western Flyer Express, LLC*, Case No. CIV-21-903-R, pending in the U.S. District Court for the Western District of Oklahoma.

2. **Administrative Expenses.** “Administrative Expenses” shall include any and all costs incurred in connection with engaging the Settlement Administrator.

3. **CAFA Notice.** “CAFA Notice” shall mean the notice of this Stipulation required to be served by Defendant with the appropriate federal and state agencies as required by 28 U.S.C. § 1715(b).

4. **Claims.** “Claims” shall mean the claims for relief asserted in the Complaint in this Action, the operative Amended Complaint in the Action, as well as claims to be asserted in a Second Amended Complaint as discussed in Section IX.1. of this Joint Stipulation of Settlement, including, but not limited to: (1) failure to pay wages and the minimum wage under the Fair Labor Standards Act (FLSA); (2) unlawful sale of business opportunities under Oklahoma law; (3) deceptive and unfair trade practices under Oklahoma law; (4) deceptive trade practices under Oklahoma law; (5) fraud, constructive fraud, misrepresentation, and negligent misrepresentation under Oklahoma law; (6) negligence under Oklahoma law; and (7) Federal Forced Labor and Federal Trafficking statutes.

5. **Classes.** The “Classes” at issue in this settlement are defined as follows:

Oklahoma Class – All current and former individuals who provide(d) transportation services for WFX within the United States, who entered into an Independent Contractor Agreement, or a similarly styled agreement, with WFX. from December 7, 2017 to July 19, 2022.

Fair Labor Standards Act (FLSA) Collective Members – All current and former individuals who provided transportation services for WFX within the United States, between December 7, 2017 and

July 19, 2022, who (1) entered into an Independent Contractor Agreement, or similarly styled agreement, with WFX, (2) were classified as independent contractors, and (3) sign or cash the settlement check(s) they receive as a result of this settlement.

6. Class Counsel. “Class Counsel” shall mean Schneider Wallace Cottrell Konecky LLP, 2000 Powell Street, Suite 1400, Emeryville, California 94608 and Law Offices of Robert S. Boulter, 1101 Fifth Avenue, Suite 310, San Rafael, California 94901.

7. Class Member. “Class Member” shall mean any person who is a member of the Class, or, if such person is incompetent or deceased, the person's legal guardian, executor, heir or successor-in-interest.

8. Class Notice. “Class Notice” shall mean the Notice of Proposed Class and Collective Action Settlement and Hearing Date for Court Approval, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members.

9. Class Participants. “Class Participants” shall mean any and all Class Members who do not submit a timely opt-out request as provided in this Stipulation.

10. Collective Period. “Collective Period” shall mean December 7, 2017, to July 19, 2022.

11. Complaint. “Complaint” shall mean the Class and Collective Action Complaint filed on December 7, 2020, in this Action.

12. Court. “Court” shall mean the U.S. District Court for the Western District of Oklahoma.

13. Defendant. “Defendant” shall mean Western Flyer Express, LLC.

14. Defense Counsel. “Defense Counsel” shall mean Michael F. Smith and Tim Spencer, of McAfee & Taft, APC, Two W. Second St., Suite 1100, Williams Center Tower II, Tulsa, Oklahoma 74103.

15. Effective Date. “Effective Date” shall be the date when all of the following events have occurred: (a) this Stipulation has been executed by all Parties and by Class Counsel and Defense Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Class Members providing them with an opportunity to opt-out of the Settlement; (d) the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Classes and approving this Stipulation; and (e) in the event there are written objections filed prior to the Final Approval and Fairness Hearing that are not later withdrawn, the later of the following events: when the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ, or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief. It is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final and there is no further opportunity for recourse by an appellant or objector who seeks to contest the Settlement. In the event that no objections are filed, the Effective Date shall be after steps (a) through (d) have been completed.

16. FLSA. “FLSA” shall mean the Fair Labor Standards Act.

17. FLSA Collective Members. “FLSA Collective Members” shall mean all current and former individuals who provided transportation services for WFX within the United States, between December 7, 2017 and July 19, 2022, who (1) entered into an Independent Contractor agreement with WFX (2) were classified as independent contractors, and (3) sign or cash the settlement check(s) they receive as a result of this settlement.

18. Final Approval and Fairness Hearing. “Final Approval and Fairness Hearing” shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement. The hearing will be scheduled to take place after expiration of the 90-day notice period required for the CAFA Notice.

19. Forced Labor and Federal Trafficking Statutes shall mean the laws under Title 18 of U.S. Code Section 1581 *et seq.* pertaining to debt servitude and/or peonage and involuntary servitude.

20. Gross Settlement Amount. “Gross Settlement Amount” shall mean the non-reversionary total amount of FOUR MILLION, NINE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$4,900,000.00) that Defendant will pay in connection with this Settlement, in exchange for the release of Class Participants’ Released Claims. The Gross Settlement Amount includes the (a) Net Settlement Amount, (b) Administrative Expenses, (c), Class Counsel’s claims for attorneys’ fees, costs, and expenses as approved by the District Court, and (d) a Service Award to the Plaintiffs as approved by the District Court. There will be no reversion. Defendant will have no obligation to pay any amount in connection with this Settlement apart from the Gross Settlement Amount.

21. Hearing on Preliminary Approval. “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary approval of the Settlement.

22. Individual Settlement Amount. “Individual Settlement Amount” shall mean the amount ultimately distributed to each Class Participant.

23. Net Settlement Amount. “Net Settlement Amount” shall mean the Gross Settlement Amount less (a) Administrative Expenses, (b) Class Counsel’s awarded attorneys’ fees, costs and expenses as determined by the District Court, and (c) a Service Award to Plaintiffs as approved by the District Court.

24. Oklahoma Class Period. “Oklahoma Class Period” shall mean December 7, 2017, to July 19, 2022.

25. Opt-Out(s). “Opt-Out(s)” shall mean any and all Oklahoma Class Members who timely and validly request exclusion from the Class in accordance with the terms of the Class Notice.

26. Opt-Out Request. “Opt-Out Request” shall mean a timely and valid request for exclusion from the Oklahoma Class in accordance with the terms of the Class Notice, or as otherwise approved by the Court.

27. Parties. “Parties” shall mean Plaintiffs and Defendant.

28. Plaintiffs. “Plaintiffs” shall mean Plaintiffs, Andrew Beissel and J&B Enterprises, Inc.

29. Preliminary Approval Date. “Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Stipulation.

30. Released Claims. “Released Claims” shall mean any and all claims, demands, causes of action, charges, and grievances, of whatever kind or nature, whether known or unknown, suspected or unsuspected, which Plaintiffs and the Class Members now own or hold or have at any time before the Effective Date owned or held against Defendant or any of the Released Parties and which arose out of, are in any way connected to, or that were made or could have been made based on facts, theories, and claims pled in the Complaint, Amended Complaint, or Second Amended Complaint. The Released Claims include, but are not limited to, all wage and hour claims under the FLSA, 29 U.S.C. §§ 206, *et seq.*, that were alleged, inferred, pled or could have been pled based on the factual allegations of the forthcoming Second Amended Complaint, , all claims for the unlawful sale of business opportunities under the Oklahoma Business Opportunity Sales Act, 71 Okla. Stat. §§ 801, *et seq.*; all claims for deceptive and unfair trade practices

under the Oklahoma Consumer Protection Act, 15 Okla. Stat. §§ 752, *et seq.*; all claims for deceptive trade practices under the Oklahoma Deceptive Trade Practices Act, 78 Okla. Stat. §§ 52, *et seq.*; all claims for constructive fraud, fraud, misrepresentation, and negligent misrepresentation; and all claims under Title 18 of U.S. Code Section 1581 *et seq.* pertaining to debt servitude and/or peonage and involuntary servitude.

31. Released Parties. “Released Parties” shall mean Defendant, and its present and former parent or holding companies, subsidiaries, divisions, affiliates of all kinds and degrees, successors, predecessors, related companies or joint ventures, and each of their present and former officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, representatives, consultants, administrators, trustees, general and limited partners, predecessors, successors and assigns.

32. Service Award. “Service Award” shall mean any additional monetary payment provided to Plaintiffs for their efforts on behalf of the Classes in this Action. Defendant shall not object to Plaintiffs requesting a Service Award in an amount up to \$25,000.

33. Settlement. “Settlement” shall mean the class and collective action settlement embodied in this Stipulation, which is subject to Court approval.

34. Settlement Administrator. “Settlement Administrator” shall mean CPT Group which the Parties have agreed will be responsible for administration of the Settlement and related matters, or another neutral administrator mutually agreed to by the Parties.

35. Stipulation. “Stipulation” shall mean this Joint Stipulation of Settlement and Release of Class and Collective Action, including any attached exhibits.

36. WFX shall mean Western Flyer Express, LLC.

II. **FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

1. **Plaintiffs' Claims.** On December 7, 2020, Plaintiffs filed their original Complaint in the U.S. District Court for the Northern District of Oklahoma. The case was subsequently transferred to the U.S. District Court for the Western District of Oklahoma, Case No. CIV-21-903-R.

The operative Amended Complaint alleges that Defendant deceived individuals into joining and/or purchasing its lease operator program. The Amended Complaint asserts the following claims for relief: (1) the Oklahoma Consumer Protection Act (OCPA), 15 Okl. St. §§ 751, et seq., (2) the Oklahoma Deceptive Trade Practices Act (ODTPA), 78 Okl. St. §§ 51 et seq., (3) common law fraud and misrepresentation, and (4) negligence.

2. **Defendant's Denial of Wrongdoing and Liability.** Defendant denies each and every one of the claims and contentions alleged by Plaintiffs in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendant contends it complied in good faith with the FLSA, treated contractors fairly, and complied with all applicable provisions of Oklahoma law cited in the Amended Complaint or any other Complaint later filed. Defendant further denies, for any purpose other than settling this Action, that the Claims are appropriate for class or representative treatment. Nonetheless, Defendant has concluded further litigation relating to the Claims would be protracted and expensive and that it is desirable that the Claims be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's businesses without further expensive litigation and the distraction and diversion of its personnel with respect to matters

at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore, determined that it is desirable and beneficial that the Claims be settled in the manner and upon the terms and conditions set forth in this Stipulation.

3. Discovery, Investigation, and Research. Class Counsel have conducted discovery and investigation relating to the Claims during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, (a) multiple meetings and conferences with the Plaintiffs; (b) inspection and analysis of documents and data produced by the Plaintiffs and/or Defendant; (c) analysis of the legal positions taken by Defendant; (d) investigation into the viability of class treatment of the claims asserted in the Action; (e) analysis of potential classwide damages; (f) research of the applicable law with respect to the claims asserted and the potential defenses thereto, (g) exchanging information and analysis with Defendant in advance of mediation, and (h) assembling of data for calculating damages.

Class Counsel and Plaintiffs have vigorously prosecuted this case, and Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims of Plaintiffs and of Defendant's defenses to them.

4. Allegations of Plaintiffs and Benefits of Settlement. The informal discovery conducted in this matter, as well as discussions between Class Counsel and Defense Counsel, have been adequate to give Plaintiffs and Class Counsel a sound understanding of the merits of the Classes' positions and to evaluate the worth of the Claims of the Class. This Settlement was reached with the assistance of an experienced mediator, Michael Russell, after arm's-length bargaining by the

Parties during a full-day mediation session. The discovery conducted in this Action and the information exchanged by the Parties through mediation are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

Plaintiffs and Class Counsel believe that the Claims have merit. However, Plaintiffs and Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Claims in this Action against Defendant through trial and appeals. Class Counsel has taken into account the uncertain outcome and the risk of any litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty of maintaining the Action as a class and/or collective action. Class Counsel is mindful of the inherent problems of proof under, and possible defenses to, the Claims. Class Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits upon Plaintiffs and Class Members and that an independent review of this Stipulation by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel have determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiffs and Class Members.

5. Intent of the Settlement. The Settlement set forth herein intends to achieve the following: (1) entry of an order approving the Settlement and granting the monetary and other relief set forth in this Stipulation to the Class Participants; (2) entry of judgment and dismissal with prejudice of the Claims; (3) discharge of Released Parties from liability for any and all of the Released Claims as to the Class Participants; and (4) discharge of the Released Parties from liability to the Plaintiffs in the form of a general release.

III. SETTLEMENT CONSIDERATION

1. Gross Settlement Amount. The Gross Settlement Amount shall not exceed the aggregate sum of FOUR MILLION NINE HUNDRED THOUSAND DOLLARS (\$4,900,000.00) in full settlement of the Released Claims. The Gross Settlement Amount shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) a general release of all claims by the Plaintiffs, (c) the Administrative Expenses, (d) Class Counsel's claims for attorneys' fees, costs, and expenses as approved by the District Court, (e) a Service Award to the Plaintiffs as approved by the District Court, and (f) any other obligation of Defendant under this Stipulation.

2. Service Award for Plaintiffs. Plaintiffs may, at the discretion of the Court, receive a Service Award, subject to Court approval, in an amount up to \$25,000 for their efforts on behalf of the Classes in this Action, including assisting in investigation and consulting with Class Counsel. Defendant shall not oppose any request by Plaintiffs for the Service Award, provided that, in exchange for receipt of a Service Award, Plaintiffs execute the release provided for in this Stipulation, which release will be effective upon the Effective Date. Defendant's providing of any relevant facts as to the Court's assessment of a Service Award will not be considered opposition to such request. Any Service Award approved by the Court shall be paid to Plaintiffs from the Gross Settlement Amount and shall be in addition to any distribution to which Plaintiffs may otherwise be entitled as a Class Participant. The Settlement Administrator will report the Service Award paid to Plaintiffs on an IRS Form 1099. Plaintiffs shall be responsible for the payment of any and all taxes with respect to their Service Award and shall hold Defendant harmless from any and all liability with regard thereto.

3. **Payment to Class Participants.** Each Class Participant shall receive payment of an Individual Settlement Amount, which shall be calculated in accordance with Article VII.

4. **Tax Treatment of Payments.** The parties agree that the Individual Settlement Amounts distributed to Class Participants will be reported on an IRS Form 1099. Further, the attorneys' fees, costs, and expenses separately paid to Class Counsel will also be reported on an IRS Form 1099. The Settlement Administrator will also report the Service Award paid to Plaintiffs on an IRS Form 1099. In the event any portion of Individual Settlement Amounts paid to Plaintiffs or the Class Participants is ultimately construed by the IRS or any other taxing authority to be taxable income from which taxes should have been withheld, Plaintiffs and the Class Participants shall pay any and all such taxes, interest, and penalties on the amount they receive.

5. **Confidentiality of settlement terms.** To the extent allowed by law, each party shall keep the terms of this Agreement and the process and documents necessary to carry it into effectiveness, as confidential, except that a party may disclose the terms of this Agreement to the party's attorneys, accountants, and other professional advisors who are not employees of a party as necessary for the normal operations of the party and the performance of this Agreement. A party may disclose the terms of this Agreement if legally required to do so by statute, or a court or governmental authority possessing the power to compel such disclosure. Upon receipt of such a demand for disclosure, the party receiving such demand shall provide notice to the other Parties as soon as practicable and provide that party reasonable time, if practicable, to contest the disclosure to the extent allowed by law.

IV. ATTORNEYS' FEES, COSTS, AND EXPENSES OF CLASS COUNSEL

1. Class Counsel Attorneys' Fees, Costs, and Expenses. As part of the motion for final approval of the Settlement, Class Counsel may submit an application for an award of attorneys' fees not to exceed 33.33% of the Gross Settlement Amount, in addition to an application for reimbursement of costs and expenses not to exceed \$100,000.00, which will be presented to and determined by the Court at the Final Approval and Fairness Hearing. Defendant agrees not to object to any such fee, cost or expense application as long as they do not differ from the parameters described above in this Section IV, 1. As a condition of this Settlement, Class Counsel have agreed to pursue their attorneys' fees, costs, and expenses with respect to the Claims only in the manner reflected by this Section. Any attorneys' fees, costs, and expenses awarded by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Participants. The Settlement is not conditioned on the Court's approval of Class Counsel's petition for attorneys' fees, costs, and expenses, and any amounts that are not approved for attorneys' fees, costs, and expenses shall remain part of the Net Settlement Amount.

The attorneys' fees, costs, and expenses approved by the Court shall encompass, with respect to the Claims: (a) fees for all work performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent Plaintiffs or the Classes through the date of this Stipulation; (b) fees for all work to be performed and costs and expenses to be incurred in connection with approval by the Court of the Settlement, including any appeal arising out of an objection to the Settlement; and (c) fees for all work to be performed and costs and expenses, if any, incurred in connection with administering the Settlement through final approval of the Settlement and dismissal of the Action, with prejudice.

2. **Payment of Attorneys' Fees, Costs, and Expenses.** Class Counsel's attorneys' fees, costs, and expenses as awarded by the Court shall be paid by the Settlement Administrator within 14 days¹ of the Effective Date out of the Gross Settlement Amount in accordance with Article VII.

No decision by the Court or any court on any application for an award of Class Counsel Attorneys' Fees, Costs, and Expenses or Plaintiffs' Service Award shall affect the validity or finality of the Settlement. Plaintiffs and Plaintiffs' Counsel may not cancel or terminate the Settlement Agreement or the Settlement based on this Court's or any other court's ruling with respect to Class Counsel Attorneys' Fees Costs, and Expenses or Plaintiffs' Service Awards

V. **CLAIMS ADMINISTRATION COSTS AND EXPENSES**

1. **The Settlement Administrator's Costs and Expenses.** All costs and expenses due to the Settlement Administrator in connection with its administration of the Settlement, including, but not limited to, providing the Class Notice, locating Class Members, processing Opt-Out Requests, and calculating, administering, and distributing settlement payments to the Class Participants, shall be paid from the Gross Settlement Amount. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs incurred in the administration of the Settlement.

2. **Payment by Defendant of Gross Settlement Amount.** Within fourteen (14) days after the Effective Date, Defendant will remit the Gross Settlement Amount to the Administrator by wire transfer. Upon receipt by the Settlement Administrator, these funds shall be transferred immediately to a Qualified Settlement Fund satisfying the requirements of Treasury Regulation

¹ The Parties intend for Rule 6 of the Federal Rules of Civil Procedure to apply to the deadlines in this Stipulation.

Section 1.468B-1 (Section 1.468B-1). The Settlement Administrator shall provide Defense Counsel with an escrow agreement within 7 days of Preliminary Approval. The Settlement Administrator shall provide Defense Counsel with a Section 1.468B-1 Relation Back Election that meets the requirements of Section 1.468B-1(j)(2) within 7 days after receipt of the funds. Defendant shall review and, if acceptable, execute and return this document to the Settlement Administrator, to the extent necessary, which shall be affixed to the initial tax return of the Qualified Settlement Fund in order to establish the start date of the Qualified Settlement Fund. Except for any costs associated with distribution of Settlement Notice, the entire Gross Settlement Amount, plus any interest earned on the Gross Settlement Amount, shall be refunded to Defendant if the Settlement does not obtain Final Approval or otherwise does not become Final, or the Effective Date does not occur.

3. Settlement Administrator Agreement. The parties agree that the agreement with the Settlement Administrator shall contain an indemnity and hold harmless agreement, subject to Defendant's approval, which shall not be unreasonably withheld, indemnifying Defendant and holding harmless Defendant from any claims or liability arising from the Settlement Administrator's actions.

VI. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS

1. The Settlement Administrator. The Settlement Administrator will be responsible for locating correct addresses for the Class Members, mailing the Class Notice to Class Members, handling inquiries from Class Members concerning the Class Notice or any other issue, preparing, administering and distributing settlement checks to Class Participants, and performing such other duties as the Parties may direct.

The Settlement Administrator will create a website for the Settlement, which will allow Class Members to view the Class Notice (in generic form), this Settlement Agreement, and all papers filed by Class Counsel to obtain preliminary and final approval of the Settlement Agreement. Additionally, the Settlement website will provide contact information for Class Counsel and the Settlement Administrator. The Settlement Administrator will provide Class Counsel and Defendants' counsel with a preview of the proposed website. Class Counsel and Defendants' counsel must approve the website before it goes live and also must approve any modifications to the website. The Settlement Administrator shall also create a toll-free telephone number to field telephone inquiries from Class Members during the notice and settlement administration periods. The Settlement Administrator will be directed to take the website and call center down after the 180-day check cashing period referenced in Section VII.9. The Settlement Administrator will be required to abide by and incorporate all confidentiality parameters agreed to by the parties and approved or ordered by the Court.

On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense Counsel updating them as to the number of validated and timely received Opt-Out Requests as well as any objections submitted by Class Members. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt-Out Requests, challenges, objections, rescissions of Opt-Out Requests and withdrawal of objections no later than 7 days after their receipt. The Settlement Administrator will provide Class Counsel with a declaration of due diligence and proof of mailing of the Class Notice and the Opt-Out Requests, which Class Counsel will file with the Court no later than 7 days prior to the Court's Final Approval and Fairness Hearing. No later than 10 days following the Opt-Out Deadline, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a

final report with information regarding (a) the final pro rata portion of the Individual Settlement Amount for each Class Participant and (b) the final number of Opt-Outs.

All costs and expenses of the Settlement Administrator for administration of the Settlement shall be paid from the Gross Settlement Amount as part of the Administrative Expenses.

2. Notice to Class Members. Notice shall be provided to Class Members in the following manner: Within 14 days of the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an updated list containing names, Social Security numbers, last-known addresses and phone numbers, and weeks worked information including: (a) total weeks during which each Class Member performed any work for Defendant in the United States of America during the Oklahoma Class Period (Oklahoma Workweeks), and (b) total weeks during which each FLSA Collective Member performed any work for Defendant in the United States of America during the Collective Period (FLSA Workweeks) (collectively, the Class Information). The Settlement Administrator shall send Class Counsel and Defense Counsel a summary of the Class Information in anonymized form. Within 28 days of the Preliminary Approval Date, the Settlement Administrator shall send each Class Member the Class Notice via first-class, United States mail. The Class Notice shall also contain an easily understood statement alerting the Class Members that, by participating in the Settlement, the Class Member is releasing and waiving all Released Claims against Defendant. In addition to other information contained on the Class Notice, the Class Notice shall state the estimated minimum payment the Class Member is expected to receive assuming full participation of all Class Members.

Any returned envelopes containing the Class Notice from this mailing with forwarding addresses will be used by the Settlement Administrator to locate Class

Members. In the event that, prior to the Opt-Out Deadline, any Class Notice mailed to a Class Member is returned to the Settlement Administrator as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s) or FLSA Collective Member(s), and a second/follow-up Class Notice will be sent to any new or different address obtained.

It will be conclusively presumed that, if an envelope containing the Class Notice has not been returned within 28 days of the mailing, the Class Member received the Class Notice. At least 7 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing (Declaration) regarding the mailing of the Class Notice and its attempts to locate Class Members. The Declaration shall specify the number of Class Members to whom Class Notices were sent and the number of Class Members to whom Class Notices were not delivered. Class Counsel shall file this Declaration with the Court.

3. Release Language on Settlement Checks. The Settlement Administrator shall include the following release language on the back of each Settlement Award check: “This check is your settlement payment in connection with the court-approved class action Settlement in Beissel, et al. v. Western Flyer Express, LLC, CIV-21-903-R. By not opting out of the Settlement, you have released Western Flyer Express and other Releasees of claims under Oklahoma and Federal law as defined in the Settlement Agreement. When you sign or cash you’re enclosed check, you affirmatively consent to join the Class Action/Collective Action and confirm your release of claims under the Fair Labor Standards Act against Releasees.”

4. Opt-Out Procedure. Class Members need not submit claims in order to receive a settlement payment. Class Members, other than Plaintiff, who wish to

exclude themselves from the Settlement (“Opt-Out”) must mail to the Settlement Administrator a written statement indicating that they do not wish to participate in or be bound by the Settlement (“Opt-Out Request”). The written Opt-Out Request must contain the Class Member’s full name, address, telephone number, email address (if applicable), and last four digits of their social security number, and must be signed individually by the Class Member. No Opt-Out Request may be made on behalf of a group. Opt-Out Requests must be made by individuals or owners of independent businesses operating in the transportation industry. An Opt-Out Request must be post-marked within 60 days of the Class Notice being mailed by the Settlement Administrator (Opt-Out Deadline). Any Opt-Out Requests received after the Opt-Out Deadline will be invalid. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves from the settlement.

In the event any Opt-Out Request is timely submitted but fails to contain sufficient information to be valid, the Settlement Administrator shall provide the Class Member, within 7 days, a letter requesting the information that was not provided and giving the Class Member 14 days from the mailing of such cure letter to respond. Any invalid submission that is not timely cured will be considered a nullity.

5. Objections. The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement must file with and deliver a written objection to the Court and serve copies of the written objection to Class Counsel and Defense Counsel no later than the Opt-Out Deadline. The date of delivery of the written objection is deemed to be the date the objection is deposited in the U.S. mail, postage prepaid, as evidenced by the postmark. If postmark dates differ, the later of the two postmark dates will control. The objection must include the objector’s name, address, telephone

number, email address (if applicable), and the case name and number, and must set forth, in clear and concise terms, a statement of the reasons why the objector believes the Court should find the Settlement is not in the best interest of the Class Members and the reasons why the Settlement should not be approved, including reasonably legible legal and factual arguments supporting the objection. The Class Notice shall advise Class Members that objections shall only be considered if the Class Member has not opted out of the Settlement; in other words, to file an objection, the Class Member must be a Class Participant. No Class Participant shall be entitled to be heard at the Final Approval Hearing (whether individually or through counsel), unless written notice of the Class Participant's intention to appear at the Final Approval Hearing has been filed with the Court and served upon Class Counsel and Defense Counsel on or before the Opt-Out Deadline. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through an attorney, he or she must also file a notice of his/her intention to appear at the same time as the objection is filed. Copies of any objection or notice of intention to appear must be simultaneously served on Class Counsel and Defense Counsel. Unless otherwise ordered by the Court, Class Participants shall not be entitled to speak at the Final Approval and Fairness Hearing unless they have submitted a timely written objection and notice of intention to appear in conformity with this Section. Class Participants who fail to make timely written objections in the manner specified above shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. However, the requirement that the Class Participant submit a written objection may be excused by the Court upon a showing of good cause. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to object to the

settlement, or appeal from any order of the Court that is consistent with the terms of this Settlement. Class Participants who have properly and timely submitted objections may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own expense.

If the Court determines the Settlement, including but not limited to the awards of Class Counsel Attorneys' Fees, Costs, and Expenses, and Plaintiffs' Service Award, is fair, adequate, and reasonable to the Class as a whole, then the Court, in its sole discretion, and as allowed under Tenth Circuit law, may require any objecting Class Member or FLSA Collective Member, as a prerequisite to pursuing an appeal, to put up a cash bond in an appropriate amount.

If an objector intends to appear and request permission to speak at the Final Fairness Hearing, either in person or through counsel, and complies with the applicable provisions in this Section, then the objector must also provide, in addition to the information required above:

- (i) A list of any witnesses the objector wishes to call at the Final Fairness Hearing, together with a brief summary of each witness's expected testimony (to the extent the objector desires to offer expert testimony and/or an expert report, any such evidence must fully comply with the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the Local Rules of the Court);
- (ii) A list of and copies of any exhibits, including demonstrative exhibits, the objector may seek to use at the Final Fairness Hearing; and
- (iii) A list of any legal authority the objector may present at the Final Fairness Hearing.

Any Class Member of FLSA Collective Member who fails to timely file such written statement and provide the notice, information and exhibits set forth in this Section, will not be permitted to present any objections at the Final Fairness Hearing and such failure will render any such attempted objection void, untimely, and of no effect. All presentations of objections will be further limited by the information listed. A Class Member's or FLSA Collective Member's mere compliance with the foregoing requirements does not in any way guarantee the ability to present evidence or testimony at the Final Fairness Hearing. The decision whether to allow any testimony, argument, or evidence, as well as the scope and duration of any and all presentations of objections at the Final Fairness Hearing, will be determined in the sole discretion of the Court.

6. Disputes. To the extent any Class Member disputes the number of Oklahoma Workweeks that Class Member reportedly worked during the Oklahoma Class Period, for members of the Oklahoma Class, or any FLSA Collective Member disputes the number of FLSA Workweeks reportedly worked during the FLSA Collective Period, as shown in his or her Class Notice, such Class Member or FLSA Collective Member may produce evidence to the Settlement Administrator establishing the Oklahoma Workweeks for the Oklahoma Class, or the FLSA Workweeks for the FLSA Collective. The deadline for Class Members or FLSA Collective Members to submit disputes pursuant to this paragraph is the Opt-Out Deadline. Unless the Class Member or FLSA Collective Member presents evidence proving he or she worked more workweeks than shown by Defendant's records, his/her Individual Settlement Amount will be determined based on Defendant's records. The Settlement Administrator shall notify counsel for the Parties of any disputes it receives. Defendant shall review its records and provide further information to the Settlement Administrator, as necessary to clear the objection up to the extent such information exists in Defendant's reasonably

accessible records. The Settlement Administrator shall provide a recommendation to counsel for the Parties in which the Settlement Administrator shall state whether the original number of Oklahoma Workweeks for the Oklahoma Class or FLSA Workweeks for the FLSA Collective credited to the Class Member and/or FLSA Collective Member should stay the same or should change and the proposed changes. Counsel for the Parties shall then meet and confer in an effort to resolve the dispute. If the Parties cannot resolve the dispute, they shall present it to the Court for resolution. The Settlement Administrator will notify the disputing Class Member or FLSA Collective Member of the decision.

7. Notice of Settlement to Federal Officials. Within 14 days of receiving notice of filing of a Motion for Preliminary Approval of this Stipulation, Defendant shall serve the CAFA Notice of this Stipulation on the appropriate federal and state officials, as required by 28 U.S.C. § 1715(b).

VII. SETTLEMENT DISTRIBUTION

1. Provision of Final Order to Settlement Administrator. Within 7 days after the Effective Date, Class Counsel shall provide a copy of the Final Order Approving Settlement and Judgment to the Settlement Administrator.

2. Allocation of the Gross Settlement Amount. The claims of all Class Members are settled for the Gross Settlement Amount of \$4,900,000, which will be allocated as follows:

- a.** The Administrative Expenses.
- b.** Class Counsel's attorneys' fees, costs, and expenses, as approved by the District Court.
- c.** Plaintiff's Service Award, as approved by the District Court.
- d.** The Net Settlement Amount, which shall be allocated and distributed among the Class Participants.

3. Calculation of the Individual Settlement Amounts. Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. Class Participants shall receive a pro rata portion of the Net Settlement Amount as follows:

a. When calculating the Individual Settlement Amounts for purposes of the Class Notice, the Settlement Administrator will assume that each individual listed on the Class Information list is a Class Participant. When calculating the Individual Settlement Amounts to Class Participants following Final Approval (for purposes of preparing Individual Settlement Amount checks), the Settlement Administrator will assume Class Participants will cash their Individual Settlement Amount checks; but will exclude Class Members who validly Opt-Out of the Settlement.

b. Class Participants shall be eligible to receive a pro rata portion of the Net Settlement Amount based on the number of settlement shares they are assigned. The Class Administrator shall assign settlement shares as follows:

- i. FLSA Collective Members will receive 1 settlement share for each FLSA Workweek between December 7, 2017 to July 19, 2022 as compensation for claims under the FLSA.
- ii. Oklahoma Class Members will receive 2 settlement shares for each Oklahoma Workweek between December 7, 2017 to July 19, 2022 as compensation for claims under Oklahoma law.

c. The total number of settlement shares for all Class Participants will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Class Participant's number of settlement shares to

determine the Class Participant's pro rata portion of the Net Settlement Amount.

d. All Individual Settlement Amount determinations shall be based on Defendant's records. If the Parties determine, based upon further review of available data, that a person previously identified as being a Class Member is not a Class Member, or an individual who was not previously identified as a Class Member is in fact a Class Member but was not so included, the Settlement Administrator shall promptly make such addition or deletion as appropriate.

4. Time for Payment of Attorneys' Fees, Costs, and Expenses to Class Counsel. The Settlement Administrator shall make every effort to mail, by first-class United States mail to the last-known address, any attorneys' fees, costs, and expenses awarded to Class Counsel no later than 14 days after, the Effective Date. If the Court approves an attorneys' fee award and/or Class Counsel's costs in amounts less than what Class Counsel requests, the reduction in the attorneys' fee award and/or Class Counsel's costs shall not be a basis for nullification of this Settlement. Nor shall a reduction in the attorneys' fee award and/or Class Counsel's costs in any way delay or preclude dismissal with prejudice after approval of the Settlement, or the Settlement from becoming effective. An IRS Form 1099 shall be provided to Class Counsel for the payments made to Class Counsel. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them.

5. Time for Payment of Service Award to Plaintiff. The Settlement Administrator shall make every effort to mail, by first-class United States mail to the last-known address, the Service Award to Plaintiff no later than 14 days after, the Effective Date. The Settlement Administrator shall issue an IRS Form 1099 for these payments. If the Court approves a Service Award in an amount less than

what Plaintiff requests, the reduction in the Service Award shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Service Award in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming effective.

6. Time for Payment of Administrative Expenses to the Settlement Administrator. The Settlement Administrator shall pay itself all costs and expenses pursuant to Article VI, Section 1 of this Stipulation within 14 days of the Effective Date or the completion of its duties under this Stipulation, whichever is later.

7. Time for Payment of Individual Settlement Amounts. The Settlement Administrator shall make every effort to mail, by first-class United States mail to the last-known address, payment of the Individual Settlement Amounts to each Class Participant no later than 14 days after the Effective Date.

If the Settlement Administrator is unable to mail the Individual Settlement Amounts to Class Participants within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date by which the Individual Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to Class Participants until all Individual Settlement Amounts have been considered, calculated, and accounted for, and the obligations set forth in Sections 4, 5, and 6 have been satisfied. In the event that any Class Participant is deceased, payment shall be made payable to the estate of that Class Participant and delivered to the executor or administrator of that estate.

Within 14 days of mailing the Individual Settlement Amounts to Class Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel and Defense Counsel a declaration of payment.

Within 90 days of mailing the Individual Settlement Amounts to Class Participants, a reminder letter will be sent via U.S. mail to Class Participants who have not yet cashed their Individual Settlement Amounts, and during the last 60 days of the check cashing period, a call will be placed to Class Participants that have still not cashed their check to remind them to do so.

8. Non-Cashed Settlement Checks. Each Class Participant must cash or deposit his or her Individual Settlement Amount check within 180 days after the checks are mailed to them. Any amounts not redeemed or deposited within 180 days of mailing will first be redistributed to Class Participants on a prorated basis as provided for in Section VII.3. The additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed checks prior to the redistribution, and Class Participants will have 180 days to redeem or deposit their redistributed checks. Following this redistribution, any remaining funds will be paid via *cy pres* in equal portions to: (1) St. Christopher Truckers Relief Fund, (2) Meals for 18 Wheels, and (3) Truckers Final Mile. In such event, the Class Participant will remain bound by the Settlement. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Participant at his or her correct address.

9. Extension of Time to Pay and/or Process Individual Settlement Amounts. Should the Settlement Administrator need more time than is provided under this Stipulation to complete any of its obligations, the Settlement Administrator may request, in writing, such additional time (including an explanation of the need for additional time) from Class Counsel and Defense Counsel. If Class Counsel and/or Defense Counsel do not agree, in writing, to the Settlement Administrator's request for additional time, the Settlement Administrator may seek such additional time from the Court.

10. No Claim Based Upon Distributions or Payments in Accordance with this Stipulation. No person shall have any claim against Defendant, Class Counsel, or Defense Counsel based on distributions or payments made in accordance with this Stipulation.

VIII. NULLIFICATION OF THIS STIPULATION AND CONDITIONAL CERTIFICATION

1. Non-Approval of the Stipulation. If (a) the Court fails to approve any material term of this Stipulation, or (b) the Court should for any reason fail to enter a judgment and dismissal with prejudice of the Claims, or (c) the judgment and dismissal is reversed, modified, or declared or rendered void, then the Settlement shall be considered null and void, and neither the Settlement nor any of the related negotiations or proceedings shall have any force or effect, and all parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.. Notwithstanding the foregoing, the Parties must attempt in good faith to cure any perceived defects in the Stipulation to facilitate approval.

2. Defendant's Right to Void Settlement. Defendant shall have the option to void the Settlement if 10% or more of the Class Members Opt-Out of the Settlement. In the event 10% or more of the Class Members Opt-Out of the Settlement, Defendant may either (a) void the entire Agreement, or (b) exercise the right to seek a reduction in the the Gross Settlement Amount in a pro rata portion to the number of Opt-Outs.

3. Invalidation. Invalidation of any material portion of the Settlement shall invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in full force and effect, or the Parties reach agreeable alternative terms, reduced to writing.

4. **Stay upon Appeal.** In the event of a timely appeal from the judgment and dismissal, the judgment shall be stayed, and none of the Gross Settlement Amount shall be distributed to Class Participants, Plaintiff, or Class Counsel, and the actions required by this Stipulation shall not take place until all appeal rights have been exhausted by operation of law.

IX. **COURT APPROVAL PROCESS**

1. **Amended Complaint.** No more than 14 days after this Stipulation of Settlement is fully executed, the Parties will stipulate to the filing of a Second Amended Complaint, and Plaintiff will file a Second Amended Complaint. Defendant shall have the right to review and comment on the Second Amended Complaint. Plaintiff will submit the proposed Second Amended Complaint for Defendant's review no later than 10 days after this Stipulation of Settlement is fully executed. The Second Amended Complaint will include the following factual allegations and claims for relief: (1) Claims for unpaid wages under the FLSA, and allegations relating to the same, as well as allegations that Defendant misclassified Class Members as independent contractors; and (2) Claims and allegations of Forced Labor and Federal Trafficking under Title 18 of U.S. Code Section 1581 *et seq.* pertaining to debt servitude and/or peonage and involuntary servitude;

2. **Preliminary Approval.** Class Counsel will submit this Stipulation to the Court and request preliminary approval of the Settlement within 30 the full and complete execution of this Stipulation of Settlement. If preliminary approval of this Settlement is not granted by the District Court, the Action will proceed as if the parties had not entered into this Stipulation.

3. **Final Approval.** Class Counsel will request final approval of the Settlement no later than 30 days after the Opt-Out Deadline. The Final Approval and Fairness Hearing shall be held in the U.S. District Court for the Western

District of Oklahoma, approximately 120 days after the District Court grants preliminary approval, on a date to be determined by the District Court.

4. Dismissal with Prejudice of the Action. The Claims shall be dismissed with prejudice as part of the consideration for the Settlement. Notwithstanding the dismissal of the Claims with prejudice, the Court shall retain jurisdiction to interpret and enforce this Stipulation.

At the Final Approval and Fairness Hearing, Class Counsel and Defense Counsel shall jointly request the Court for the entry of the final order approving the Settlement as being fair, reasonable, and adequate to the Class Participants within the meaning of Fed. R. Civ. P. 23(c) and under the FLSA, and for the entry of a final judgment of dismissal with prejudice of the Claims consistent with the terms of the Settlement. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

X. RELEASES AND WAIVERS

1. Release of Claims by Class Participants. Upon the Effective Date, the Class Participants and Plaintiff each release the Released Parties, and each of them, of and from any and all of the Released Claims.

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge the disputes and claims relating to the Released Claims asserted in this Action against Defendant, whether known or unknown, liquidated or unliquidated. All Class Participants and Plaintiffs expressly waive all claims that were pled in the Complaint, Amended Complaint, or the Second Amended Complaint, as well as claims that could have been pled in those Complaints based on the factual allegations contained therein. As such, the Class Participants and Plaintiff understand and agree that they are providing the Released Parties with a full and complete release with respect to the Released Claims.

This Stipulation is intended to include within its effect any and all claims, damages, causes of action, and claims for attorneys' fees, costs, and expenses relating to the Released Claims asserted in the Action, and that, subject to the terms and conditions of this Stipulation and upon Final Approval of this Stipulation, all such claims, damages, causes of action, and claims for attorneys' fees, costs, and expenses that were or could have been asserted in the Action are deemed to be fully and finally resolved and are to be dismissed, with prejudice, as to each and every Class Participant and Plaintiffs.

Each Class Participants and Plaintiffs will be bound to the release of the Released Claims as a result of the Settlement and to the dismissal of the Claims, with prejudice.

2. Release of Claims by Plaintiffs. Plaintiffs, in exchange for receipt of a Service Award approved by the Court, on behalf of themselves and their heirs, executors, administrators, and representatives, shall and does hereby forever release, discharge and agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees, costs, and expenses), known or unknown, at law or in equity, which he may now have or may have at any time prior to the Effective Date, against Defendant arising out of or in any way connected with his alleged employment with Defendant, his contracts with Defendant, including claims alleged in the Complaint, and any and all transactions, occurrences, or matters between the Parties occurring prior to the Preliminary Approval Date. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans with Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e)

the Age Discrimination in Employment Act, as amended; (f) the Equal Pay Act; (g) the Employee Retirement Income Security Act, as amended; (h) the Consolidated Omnibus Budget Reconciliation Act; (i) the Rehabilitation Act of 1973; (j) the Family and Medical Leave Act; (k) the Civil Rights Act of 1966; (l) the Fair Labor Standards Act; (m) all Truth-in-Leasing claims that were alleged, inferred, pled or could have been pled under 49 U.S.C. § 14102 and 49 C.F.R. §§ 376.11 and 376.12; and (n) any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorneys' fees, costs, and expenses, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Defendant and the Released Parties from any and all claims for attorneys' fees, costs, and expenses arising out of the matters released in this Agreement.

Plaintiffs may hereafter discover facts in addition to or different from those which he now knows or believes to be true with respect to the subject matter of the Released Claims and all the claims referenced herein, but stipulates and agrees that, upon the Effective Date, Plaintiffs shall and hereby do fully, finally and forever settle and release any and all claims against Defendant and the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist or heretofore may have existed upon any theory of

law or equity without regard to the subsequent discovery of existence of such different or additional facts.

Plaintiffs also agree that, to the extent permitted by law, if a claim is prosecuted in either of their names against any of the Released Parties before any court or administrative agency prior to the Effective Date, they waive, and agree not to take, any award of money or other damages from such proceeding. Plaintiffs agree that, unless otherwise compelled by law, if a claim is prosecuted in either of their names against any of the Released Parties, they will immediately request in writing that the claim on their behalf be withdrawn.

3. Release of Monetary Claims. Subject to Court approval, the Parties agree that Defendant will release Class Participants who were not under contract with Defendant as of July 19, 2022, from all known and unknown monetary claims.

XI. DUTIES OF THE PARTIES

1. Mutual Full Cooperation. The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including all reasonable efforts contemplated by this Stipulation and any other efforts that may become necessary by court order, or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this Stipulation.

2. Duty to Support and Defend the Settlement. The Parties hereto agree to abide by all of the terms of the Settlement in good faith and to support the

Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

XII. MISCELLANEOUS PROVISIONS

1. No Prior Assignments. The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein released and discharged except as set forth herein.

2. Non-Admission. Nothing in this Stipulation shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, the FLSA Collective Members, or any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, the FLSA Collective Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a class, collective or representative action other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each and every material factual allegation and alleged claim asserted in the Action. To this end, the Settlement of the Action, the negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Stipulation or the Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the Action; and are

not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal.

3. Confidentiality. Plaintiffs and Defendant, and their respective counsel, recognize and accept that the Parties to this Stipulation desire that the terms of this Stipulation, the fact of the Settlement embodied in this Stipulation, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including the informal discovery proceedings therein and the mediation conducted by the parties, and evidence obtained during the course of the Action, shall not be discussed with or presented to the media. Neither Plaintiff nor Class Counsel shall issue any press release related to the Settlement. Plaintiff and Class Counsel agree that, prior to preliminary approval of the Settlement, they will keep the terms of the Settlement confidential except for purposes of communicating with Plaintiffs only. Plaintiffs shall also be informed that the Settlement is confidential and shall be advised to keep the Settlement confidential. After preliminary approval of the Settlement, Plaintiffs and Class Counsel may: (a) as required by law; (b) as required under the terms of this Stipulation; or (c) as required under counsel's duties and responsibilities as Class Counsel, comment regarding the specific terms of the Settlement. In all other cases, Plaintiff and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the worldwide web), to say the Action has been resolved and that Plaintiff and Class Counsel are satisfied with the Settlement terms.

4. Non-Retaliation. Defendant understands and acknowledges that it has a legal obligation not to retaliate against any Class Member. Defendant will refer any inquiries regarding this Settlement to the Settlement Administrator or Class

Counsel and will not discourage Class Members, directly or indirectly, from participating in, opting out of, or objecting to the Settlement.

5. Construction. The Parties hereto agree that the terms and conditions of this Stipulation are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Stipulation is not to be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting of this Stipulation.

6. Governing Law. This Stipulation is intended to and shall be governed by the laws of the State of Oklahoma, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

7. Notices. Except for Class Member notices required to be made by the Settlement Administrator and the CAFA Notice, any and all notices or other communications required or permitted under this Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their counsel or if sent to the party without counsel by United States certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the party appearing in this Stipulation.

8. Captions and Interpretations. Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Stipulation or any provision thereof.

9. Modification. This Stipulation may not be changed, altered, or modified, except in writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

10. Integration Clause. This Stipulation contains the entire agreement between the Parties relating to the Settlement of the Action and the transactions

contemplated thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby superseded.

11. Successors and Assigns. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent or holding companies, subsidiaries, affiliates of all kinds and degrees, related companies, joint ventures, predecessors, successors, and assigns.

12. Class Counsel Signatories. Because the Class Members and FLSA Collective Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member or FLSA Collective Member sign this Stipulation. It is agreed that, for purposes of seeking approval of the Settlement, this Stipulation may be executed on behalf of the Class Members and FLSA Collective Members by Class Counsel and Plaintiffs.

13. Corporate Signatories. Any person executing this Stipulation or any such related document on behalf of a corporate signatory hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation to execute this Stipulation or any such related document.

14. Execution in Counterparts. This Stipulation shall become effective upon its execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

15. Attorney Fees, Costs, and Expenses. Except as otherwise specifically provided for herein, each party shall bear his or its own attorneys' fees,

costs, and expenses, taxable or otherwise, incurred by them with respect to the Claims in the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

16. Action to Enforce Agreement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover attorneys' fees, costs, and expenses.


IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the date below their signatures or the signature of their representatives. The date of the Stipulation shall be the date of the latest signature.

ANDREW BEISSEL



Dated: 11 / 29 / 2022

J&B ENTERPRISES, INC.

By:  _____

Andrew J Beissel
Owner

Printed Name and Title

Dated: 11 / 29 / 2022

c/o SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608

WESTERN FLYER EXPRESS, LLC

By: _____

Printed Name and Title

Dated: _____

costs, and expenses, taxable or otherwise, incurred by them with respect to the Claims in the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

16. **Action to Enforce Agreement.** In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover attorneys' fees, costs, and expenses.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the date below their signatures or the signature of their representatives. The date of the Stipulation shall be the date of the latest signature.

ANDREW BEISSEL

Dated: _____

J&B ENTERPRISES, INC.

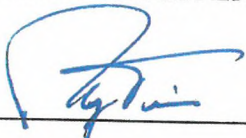
By: _____

Printed Name and Title

Dated: _____

c/o SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608

WESTERN FLYER EXPRESS, LLC

By: 


Randy TIMMS, CEO
Printed Name and Title

Dated: 12/05/22

APPROVED AS TO FORM AND CONTENT

SCHNEIDER WALLACE
COTTRELL KONECKY LLP

MCAFEE & TAFT, APC

By: 
David C. Leimbach

By: _____
Michael F. Smith

Dated: December 5, 2022

Dated: _____

SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608

MCAFEE & TAFT, APC
Two W. Second St., Suite 1100
Williams Center Tower II
Tulsa, Oklahoma 74103

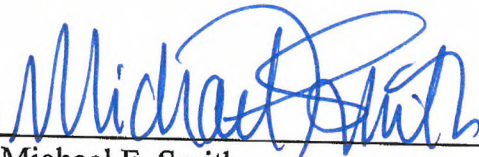
Attorneys for Plaintiffs, Andrew Beissel, Attorneys for Defendant, Western Flyer
an individual, and J&B Enterprises, Inc., a Express, LLC
Colorado Corporation

APPROVED AS TO FORM AND CONTENT

SCHNEIDER WALLACE
COTTRELL KONECKY LLP

MCAFEE & TAFT, APC

By: _____
David C. Leimbach

By: 
Michael F. Smith

Dated: _____

Dated: Dec. 5, 2022

SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608

MCAFEE & TAFT, APC
Two W. Second St., Suite 1100
Williams Center Tower II
Tulsa, Oklahoma 74103

Attorneys for Plaintiffs, Andrew Beissel, Attorneys for Defendant, Western Flyer
an individual, and J&B Enterprises, Inc., a Express, LLC
Colorado Corporation

Exhibit 1

Notice of Proposed Class and Collective Action Settlement and Hearing Date for Court Approval

Andrew Beissel, J&B Enterprises, Inc., a Colorado Corporation, individually and on behalf of all others similarly situated v. Western Flyer Express, LLC
U.S. District Court for the Western District of Oklahoma
Case No. 5:21-cv-00903-R

TO: All current and former individuals who provide(d) transportation services for Western Flyer Express, LLC (“WFX”) within the United States, who entered into an Independent Contractor Agreement, or a similarly styled agreement, with WFX, from December 7, 2017 to July 19, 2022 (“Class Members”).

★★★★

**PLEASE READ THIS NOTICE CAREFULLY.
THIS NOTICE COULD AFFECT YOUR LEGAL RIGHTS.
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT.**

**THIS IS A COURT APPROVED NOTICE.
IT IS NOT A SOLICITATION FROM AN ATTORNEY**

★★★★

I. WHY DID I RECEIVE THIS NOTICE AND WHAT IS THE CASE ABOUT?

You are a potential Class Member in a class action lawsuit (the “Action”) filed against Western Flyer Express, LLC (“WFX” or “Defendant”). In the Action, Plaintiffs Andrew Beissel and J&B Enterprises, Inc. (“Plaintiffs”) allege that WFX induced Class Members to join a lease operator program which failed to provide all the advertised benefits, and, in some circumstances, improperly paid Class Members. On this basis, Plaintiffs allege that WFX violated the Oklahoma Consumer Protection Act (OCPA), Oklahoma Deceptive Trade Practices Act (ODTPA), the Fair Labor Standards Act (FLSA), and other Oklahoma and federal law. WFX categorically denies the allegations in the Action, and the Court dismissed the ODTPA count for failure to state a claim. WFX asserts that it has not violated any laws and owes no damages.

Rather than litigate the Action, the Parties reached an agreement to settle all claims in the Action (the “Settlement”), and the Parties’ agreement was preliminarily approved by the U.S. District Court for the Western District of Oklahoma (“the Court”) on [INSERT DATE OF PRELIMINARY APPROVAL ORDER]. You are receiving this Notice of Proposed Class and Collective Action Settlement and Hearing Date for Court Approval (“Notice”) because WFX’s records indicate you and/or your business (collectively “you”) entered into an Independent Contractor Agreement, or a similarly styled agreement, with WFX. In granting preliminary approval of the Settlement, the Court ordered that this Notice be sent to you to inform you of the Settlement and your legal rights. As discussed below, the Court will hold a Final Approval and Fairness Hearing on [INSERT DATE OF FINAL APPROVAL HEARING].

Because WFX’s records indicate you qualify as a member of the Class, **you are entitled to receive money from the Settlement, as described below and on the enclosed Class Form.** This Notice explains the details of the Settlement, how you can participate in the Settlement, and how you can opt-out or object to the Settlement (if you choose to do so). **IF YOU WISH TO PARTICIPATE IN THIS SETTLEMENT OF THE CLASS ACTION, AND THE INFORMATION IN THE ATTACHED CLAIM FORM IS**

CORRECT, YOU DO NOT NEED TO DO ANYTHING; A CHECK FOR YOUR SHARE OF THE SETTLEMENT FUNDS WILL BE MAILED TO YOU FOLLOWING FINAL COURT APPROVAL OF THE SETTLEMENT.

Your estimated Individual Settlement Amount is reported on the enclosed Class Form.

II. WHAT ARE THE PARTIES' POSITIONS AND REASONS FOR SETTLEMENT?

The Action is brought by Plaintiffs, on behalf of themselves and all others that Plaintiffs contend are similarly situated (i.e., the Class Members) in which they allege the following claims (without limitation) against WFX:

- Deceptive and unfair trade practices under the Oklahoma Consumer Protection Act (15 Okla. Stat. §§ 751, *et seq.*);
- Unlawful sale of business opportunities under the Oklahoma Business Opportunity Sales Act (71 Okla. Stat. §§ 801, *et seq.*);
- Fraud and misrepresentation;
- Negligence;
- Failure to pay wages under the Fair Labor Standards Act (29 U.S.C. §§ 201, *et seq.*); and
- Violation of federal forced labor and federal trafficking statutes pertaining to debt servitude and/or peonage and involuntary servitude (18 U.S.C. §§ 1581, *et seq.*).

Counsel for the Plaintiffs ("Class Counsel"), which has experience handling legal cases like the Action, has investigated and researched the facts and law for the issues in the Action and has concluded that, taking all factors into account, the proposed Settlement is fair, adequate, and reasonable and in the best interests of the Class Members.

WFX denies all claims and allegations asserted in the Action. WFX believes it has complied with all laws. WFX further contends that it has dealt legally and fairly with Plaintiffs and Class Members and denies that it has done anything wrong. WFX has asserted legal and factual defenses to Plaintiffs' claims, and has denied and continues to deny each and all of the allegations, claims, and contentions alleged by the Plaintiffs in this Action. Additionally, WFX believes the Action is not appropriate for treatment as a class action and that it would prevail if the Action were litigated through trial. However, given the cost of litigation and the unpredictable nature of trials, WFX has agreed to the Settlement, which it considers to be more than fair taking all factors into account. Nothing about the Settlement or this Notice constitutes an admission or indication of any fault, wrongdoing, or liability by WFX or any of the Released Parties.

The Parties both recognize that continuing to litigate the Action takes time and money and any outcome is uncertain. Therefore, the Parties have agreed to settle this Action on the terms set forth in the Settlement. The Settlement was reached after intensive litigation, discovery, and negotiations through a neutral mediator.

The Court has preliminarily approved the Settlement as fair, adequate, and reasonable, but has made no ruling and expressed no opinion on the merits of the claims or defenses in the Action.

III. WHAT ARE THE SETTLEMENT TERMS?

The Settlement provides that WFX will pay a total of \$4,900,000.00 (the "Gross Settlement Amount") to fully resolve the claims in the Action. Certain deductions will be made from the Gross Settlement Amount,

as follows:

- (1) The Court has tentatively approved a payment of \$[insert] to the Settlement Administrator, CPT Group, for the costs incurred in administering the Class, notifying the Class Members and issuing payments.
- (2) Class Counsel will ask the Court at the Final Approval and Fairness Hearing to approve a Service Award in the total amount of \$25,000.00 to the Plaintiffs, for acting as the representatives on behalf of the Class Members and spending time assisting with the Action, which was not required of other Class Members.
- (3) Class Counsel will ask the Court at the Final Approval and Fairness Hearing to approve attorneys' fees and costs not to exceed 33.33% of the Gross Settlement Amount, or \$1,633,170.00, plus reimbursement of the reasonable litigation expenses incurred by Class Counsel up to \$100,000.00. Class Counsel has litigated the Action on behalf of the Class Members on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. The attorneys' fees and costs award will fully compensate Class Counsel for all legal fees and expenses incurred in the Action, including any work they do in the future. Class Members are not personally responsible for any fees or expenses. The amount of Attorneys' Fees and Costs awarded will be determined by the Court at the Final Approval and Fairness Hearing.

The balance of the Gross Settlement Amount after the deductions described above is the "Net Settlement Amount." The Net Settlement Amount will be paid to the Class Members and is estimated to be \$[insert]. Your estimated share of the Net Settlement Amount is reported on the enclosed Class Form.

This Notice summarizes the proposed Settlement. The full terms of the proposed Settlement are contained in the Joint Stipulation of Settlement and Release of Class and Collective Action that the Parties executed and which the Court preliminarily approved. **Please visit the Settlement website at [insert URL]** to view the Joint Stipulation of Settlement and Release of Class and Collective Action, the motions and related documents filed by Class Counsel to obtain the Court's approval of the Settlement, the relevant orders issued by the Court, and other important information.

In addition to the above, you may access all of the documents filed with the Court in this case (for cost) by accessing the PACER court records system at <https://pacer.uscourts.gov>.

IV. WHAT ARE MY OPTIONS, HOW CAN I GET MY SETTLEMENT MONEY, AND WHAT DO I NEED TO DO?

- **Option 1** — Do nothing: If you are a Class Member and you do nothing, you will **automatically be sent a payment by check** for your share of the Settlement. Please refer to the enclosed Class Form for your estimated Individual Settlement Amount. **Please review the Class Form carefully.**

Name and address changes: The enclosed Class Form sets forth the name, address, and last four digits of the Social Security Number or Employer Identification Number for the individual or entity that will be issued the payment for your Individual Settlement Amount. Please note that many Class Members used an entity, like a corporation or an LLC, when they provided transportation services. As a result, the Class Form may identify you by your entity name and not your personal name. Please review this information closely. Your Individual Settlement Amount will be made payable to the individual or entity that is

identified on the Class Form. You can change the payment information for your Individual Settlement Amount, including the recipient's name for the check, by making the necessary changes on the Class Form and returning it to the Settlement Administrator. For example, if you would like to change the recipient for your Individual Settlement Amount check, from your entity name to your personal name, you can use the Class Form to do so. You can also use the Class Form for routine address changes and taxpayer ID number changes.

THE SETTLEMENT ADMINISTRATOR MUST HAVE THE CORRECT SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER, THAT MATCHES YOUR PAYMENT INFORMATION, IN ORDER TO ISSUE YOUR PAYMENT. You will be required to submit a completed, signed IRS Form W-9 to change your taxpayer ID number. Please see the Class Form for further information.

- **Option 2** — Request exclusion from the Settlement: If you are a Class Member and you wish to be excluded from the Settlement, you must send a written Opt-Out Request to the Settlement Administrator at the following address: [INSERT]. Your written Opt-Out Request must include your full name, address, telephone number, email address (if applicable), and last four digits of your social security number; the case name and/or case number; your signature; and the following statement or something similar: "I request to be excluded from the class action settlement taking place in the matter of *Beissel v. Western Flyer Express, LLC*, Case No. Case No. 5:21-cv-00903-R, U.S. District Court for the Western District of Oklahoma." Your Opt-Out Request must identify any entities, like a corporation or an LLC, that you used when you provided transportation services to WFX. Opt-Out Requests must be postmarked by [INSERT DATE] to be timely. Class Members will be given an opportunity to rectify (cure) deficient Opt-Out Requests that are timely submitted. Uncured Opt-Out Requests, and/or those that are not timely submitted, will be disregarded and the Class Member will be sent a check for his or her share of the Settlement and will be bound by the Settlement. **If you submit a valid and timely Opt-Out Request, you will not be bound by the Settlement, you will not release any claims, and you will not receive any cash payment.**
- **Option 3** — Object to the Settlement: If you are a Class Member and have concerns about the Settlement, you may submit a written objection to raise your concerns with the Court. You must send the written objection to the Court and Class Counsel and Defense Counsel at the following addresses:

<u>Court:</u> Clerk's Office William J. Holloway, Jr. United States Courthouse 200 N.W. 4th St. Oklahoma City, OK 73102	<u>Class Counsel:</u> Carolyn H. Cottrell, Esq. David C. Leimbach, Esq. SCHNEIDER WALLACE COTTRELL KONECKY LLP 2000 Powell Street, Suite 1400 Emeryville, California 94608	<u>Defense Counsel:</u> Michael F. Smith, Esq. Tim Spencer, Esq. MCAFEE & TAFT, APC Two W. Second St., Suite 1100 Williams Center Tower II Tulsa, Oklahoma 74103
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Written objections must be postmarked by [INSERT DATE] to be timely. The date of delivery of the written objection is deemed to be the date the objection is deposited in the U.S. Mail, postage prepaid, as evidenced by the postmark. If postmark dates differ, the later of the postmark dates will control.

The written objection must include your full name, address, telephone number, email address (if applicable), and the case name and number. It must identify any entities, like a corporation or an LLC, that you used when you provided transportation services to WFX. It must set forth, in clear and concise terms, a statement of the reasons why you believe the Court should find the Settlement is not in the best

interest of the Class Members and the reasons why the Settlement should not be approved, including reasonably legible legal and factual arguments supporting the objection. Objections will only be considered if you do not opt out of the Settlement. If you wish to object and also to appear at the Final Approval and Fairness Hearing, in person or through an attorney, you must submit a written notice of your intention to appear at the Final Approval and Fairness Hearing to the Court, with copies to Class Counsel and Defense Counsel, at the time you submit your objection. Copies of any objection or notice of intention to appear must be simultaneously served on Class Counsel and Defense Counsel at the same time as they are submitted to the Court. Class Members who have properly and timely submitted a written objection and notice of intention to appear in conformity with this Notice may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own expense. Unless otherwise ordered by the Court, Class Members are not entitled to speak at the Final Approval and Fairness Hearing unless they have submitted a timely written objection and notice of intention to appear in conformity with this Notice.

Class Members who fail to make timely written objections in the manner specified in this Notice shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. However, the requirement that the Class Member must submit a written objection may be excused by the Court upon a showing of good cause.

If the Court determines the Settlement, including but not limited to the awards of attorneys' fees and costs to Class Counsel and the Service Award to Plaintiffs, is fair, adequate, and reasonable to the Class as a whole, then the Court, in its sole discretion, and as allowed under Tenth Circuit law, may require any objecting Class Member, as a prerequisite to pursuing an appeal, to put up a cash bond in an appropriate amount.

If you intend to appear and request permission to speak at the Final Approval and Fairness Hearing, either in person or through counsel, you must also provide, in addition to the information required above:

- i. A list of any witnesses you wish to call at the Final Approval and Fairness Hearing, together with a brief summary of each witness's expected testimony (to the extent you desire to offer expert testimony and/or an expert report, any such evidence must fully comply with the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the Local Rules of the Court);
- ii. A list of and copies of any exhibits, including demonstrative exhibits, you may seek to use at the Final Approval and Fairness Hearing; and
- iii. A list of any legal authority you may present at the Final Approval and Fairness Hearing.

Any Class Member who fails to timely file such written statement and provide the notice, information and exhibits set forth herein will not be permitted to present any objections at the Final Approval and Fairness Hearing and such failure will render any such attempted objection void, untimely, and of no effect. All presentations of objections will be further limited by the information listed. A Class Member's mere compliance with the foregoing requirements does not in any way guarantee the ability to present evidence or testimony at the Final Approval and Fairness Hearing. The decision whether to allow any testimony, argument, or evidence, as well as the scope and duration of any and all presentations of objections at the Final Approval and Fairness Hearing, will be determined in the sole discretion of the Court.

If you submit an objection and the Court approves the Settlement despite your objection, you will still be bound by the Settlement. You may not both object to the Settlement and request to

be excluded from the Settlement. If you timely submit both an Opt-Out Request (per Option 2 above) and an objection (per this Option 3), your Opt-Out Request will be nullified and you will be bound by the Settlement (and receive a check for your share of the Settlement) unless your objection is sustained.

V. HOW ARE THE INDIVIDUAL SETTLEMENT AMOUNTS CALCULATED?

Payments to the Class Members will be calculated on the basis of the number of weeks that each Class Member performed any work for WFX in the United States, pursuant to an Independent Contractor Agreement or a similarly styled agreement, from December 7, 2017 to July 19, 2022. Each workweek will be assigned a value of three shares – one share for compensation for claims under the FLSA and two shares for compensation for claims under Oklahoma law. The total number of settlement shares for all Class Members will be added together, and the Net Settlement Amount will be divided by that total to reach a per share dollar figure. The resulting per share dollar figure will then be multiplied by each Class Member's number of settlement shares to determine the Individual Settlement Amount.

Your estimated Individual Settlement Amount and your eligible Workweeks are reported on the enclosed Class Form. The estimated Individual Settlement Amount is a reasonable and good faith estimate based on the information currently available to the Parties. The actual payment that you will receive, if you participate in the Settlement, may be higher or lower.

If you dispute eligible Workweeks shown on your Class Form, you may produce evidence to the Settlement Administrator establishing what you contend is the correct number of eligible Workweeks. The deadline to dispute the eligible Workweeks shown on your Class Form is [INSERT DATE]. Unless you present convincing evidence proving that you have more eligible Workweeks than indicated by WFX's records, then your share will be based on WFX's records. The Settlement Administrator will notify counsel for the Parties of any disputes. Instructions for submitting disputes are on the Class Form. The Class Form can also be used for submitting name, address, and taxpayer ID number changes.

The Settlement Administrator will issue a Form 1099 to each participating Class Member to report payment of the Individual Settlement Amount. You should consult with your tax advisors concerning the tax consequences of the payment you receive under the Settlement. Participating Class Members understand and agree that they will be responsible for the payment of taxes on their Individual Settlement Amounts to the extent necessary.

If you participate in the Settlement, you will have 180 calendar days to cash the Individual Settlement Amount check that will be sent to you. In the event that any Individual Settlement Amount check is not deposited, cashed, or otherwise negotiated within the 180-day period, it shall be void. Any failure of a participating Class Member to deposit a check shall not affect the enforceability of the release of all claims; a participating Class Member that fails to negotiate his or her Individual Settlement Amount check shall remain bound by the Settlement. At the conclusion of the 180-day check void period, the amounts from uncashed checks will be redistributed to those participating Class Members that cashed their Individual Settlement Amount checks. Any uncashed check funds remaining after the redistribution/reissuance of the Settlement checks will be paid via *cy pres* in equal portions to organizations which benefit truck drivers: (1) St. Christopher Truckers Relief Fund, (2) Meals for 18 Wheels, and (3) Truckers Final Mile.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Individual Settlement Amount check. If you fail to keep your address current, you may not receive your Individual Settlement Amount check.

VI. WHAT AM I GIVING UP IN EXCHANGE FOR THE SETTLEMENT BENEFITS?

If approved by the Court, the Settlement will bar all Class Members who do not timely request exclusion from the Action (“Class Participants”) from bringing the following claims:

“Released Claims” shall mean any and all claims, demands, causes of action, charges, and grievances, of whatever kind or nature, whether known or unknown, suspected or unsuspected, which Plaintiffs and the Class Members now own or hold or have at any time before the Effective Date owned or held against Defendant or any of the Released Parties and which arose out of, are in any way connected to, or that were made or could have been made based on facts, theories, and claims pled in the Complaint, Amended Complaint, or Second Amended Complaint. The Released Claims include, but are not limited to, all wage and hour claims under the FLSA, 29 U.S.C. §§ 206, *et seq.*, that were alleged, inferred, pled or could have been pled based on the factual allegations of the Second Amended Complaint; all claims for the unlawful sale of business opportunities under the Oklahoma Business Opportunity Sales Act, 71 Okla. Stat. §§ 801, *et seq.*; all claims for deceptive and unfair trade practices under the Oklahoma Consumer Protection Act, 15 Okla. Stat. §§ 752, *et seq.*; all claims for deceptive trade practices under the Oklahoma Deceptive Trade Practices Act, 78 Okla. Stat. §§ 52, *et seq.*; all claims for constructive fraud, fraud, misrepresentation, and negligent misrepresentation; and all claims under 18 U.S.C. §§ 1581, *et seq.*, pertaining to debt servitude and/or peonage and involuntary servitude.

Upon the Effective Date, the Class Participants and Plaintiffs each release the Released Parties, and each of them, of and from any and all of the Released Claims. “Released Parties” means WFX, and its present and former parent or holding companies, subsidiaries, divisions, affiliates of all kinds and degrees, successors, predecessors, related companies or joint ventures, and each of their present and former officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, representatives, consultants, administrators, trustees, general and limited partners, predecessors, successors and assigns. By signing and/or cashing the Settlement check that you will receive, you confirm that you opt in to the FLSA Collective in the Action and release applicable claims under the FLSA.

The Settlement is conditioned upon the Court entering an order at or following the Final Approval and Fairness Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Class Members.

VII. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval and Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [TIME] on [DATE] in Courtroom 302 at the William J. Holloway, Jr. United States Courthouse, United States District Court for the Western District of Oklahoma, 200 N.W. 4th St., Oklahoma City, Oklahoma 73102. The hearing date may be changed without further notice. You are **not** required to attend the Final Approval and Fairness Hearing.

VIII. WHO ARE THE ATTORNEYS REPRESENTING THE PLAINTIFFS AND CLASS MEMBERS?

Plaintiffs and the Class Members are represented in this Action by attorneys from the law firms of Schneider Wallace Cottrell Konecky LLP and the Law Offices of Robert S. Boulter:

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VIII. CAN WFX RETALIATE AGAINST ME AS A RESULT OF WHAT I DO IN RESPONSE TO THIS NOTICE?

No. If you or your business is currently contracting with WFX, your decision whether to participate in, object to, or opt out of this Settlement will in no way affect your relationship with WFX. WFX is legally prohibited from taking any adverse action against you as a result of your decision whether or not to participate in this Settlement, and WFX has no intention of doing so. However, you or WFX may terminate an existing contract per its terms irrespective of this Settlement.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS ABOUT THE SETTLEMENT, you may contact the Settlement Administrator at the address and telephone number listed below, toll free.

[INSERT]

ADDITIONAL INFORMATION

This Notice only summarizes the Action, the Settlement and related matters. For more information, you can access the Settlement website at [insert URL] to view the Joint Stipulation of Settlement and Release of Class and Collective Action, the motions and related documents filed by Class Counsel to obtain the Court's approval of the Settlement, the relevant orders issued by the Court, and other important information. In addition, you may access all of the documents filed with the Court in this case (for cost) by accessing the PACER court records system at <https://pacer.uscourts.gov>.

PLEASE DO NOT TELEPHONE THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR WFX FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

CLASS FORM

***Andrew Beissel, J&B Enterprises, Inc., a Colorado Corporation, individually and on behalf of all others
similarly situated v. Western Flyer Express, LLC***
U.S. District Court for the Western District of Oklahoma
Case No. 5:21-cv-00903-R

This Class Form provides your estimated Individual Settlement Amount, your eligible Workweeks, and the name, address, and taxpayer identification number to which your payment will be issued. You may use this form to submit (1) disputes regarding your eligible Workweeks, (2) name, address, and taxpayer identification number changes, or both.

YOUR ESTIMATED INDIVIDUAL SETTLEMENT AMOUNT: \$

YOUR ELIGIBLE WORKWEEKS:

Your estimated Individual Settlement Amount is based on corporate and business records maintained by Western Flyer Express, LLC ("WFX") that show the number of weeks you or your business (collectively "you") performed any work for WFX in the United States of America from December 7, 2017 to July 19, 2022.

YOUR NAME AND TAXPAYER ID NUMBER

Please Make any Name/Address Changes Here:

«First» «Last»

«Address1»

«Address2»

«City»

«State»

«Zip»

The last four digits of your Social Security Number (SSN) or Employer Identification Number (EIN) are: «**Last 4 SSN/EIN**».

If you have changes to your Social Security Number or Employer Identification Number changes, please make them here (for confirmation purposes, please also print the Taxpayer Name associated with the new or revised number):

SSN/EIN: _____

Taxpayer Name: _____

Your Individual Settlement Amount check will be made payable to the name provided above. Therefore, if the name of your entity appears above, then your Individual Settlement Amount check will be issued in the name of your entity. If you would like to change the recipient's name for your Individual Settlement Amount check (for example, to change it from your entity name to your personal name), you can use this Class Form to do so. You can also use this form for routine address changes and taxpayer ID number changes.

THE SETTLEMENT ADMINISTRATOR MUST HAVE THE CORRECT SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER IN ORDER TO ISSUE YOUR PAYMENT. IF YOU CHANGE THE RECIPIENT'S NAME FOR YOUR INDIVIDUAL SETTLEMENT AMOUNT CHECK, PLEASE ALSO CHANGE THE SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER. FOR SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER CHANGES, YOU MUST ENCLOSE A COMPLETED, SIGNED IRS FORM W-9. You may obtain IRS Form W-9 by visiting the IRS website: <https://www.irs.gov/forms-pubs/about-form-w-9>.

I. IF YOU AGREE WITH THE INFORMATION ABOVE

If you believe the number of eligible Workweeks listed above is correct, and you do not have any changes for your name, address, or taxpayer identification number, **you do NOT need to return** or otherwise take any action in response to this Class Form.

II. IF YOU WOULD LIKE TO MAKE NAME, ADDRESS, AND/OR TAXPAYER ID NUMBER CHANGES

To submit name, address, or taxpayer ID number changes, write in the updated name, address, and/or taxpayer identification number (SSN or EIN) above, print and sign your name, provide your title if necessary, provide the date, and, return this Class Form and supporting documentation to the Settlement Administrator at the address below by **[INSERT DATE]**. Again, please note that the Settlement Administrator must have the correct Social Security Number or Employer Identification Number to issue your payment. **Please be sure to include a completed, signed IRS form W-9 for any taxpayer identification number changes.**

III. IF YOU DISPUTE YOUR ELIGIBLE WORKWEEKS

If you believe the eligible Workweeks specified above is incorrect, check the box below, write in the number of weeks during which you believe you performed any work for WFX in the United States of America from December 7, 2017 to July 19, 2022, print and sign your name, provide your title if necessary, insert the date, and, by **[INSERT DATE]**, send this Class Form and supporting documentation to the Settlement Administrator at the address below.

The Settlement Administrator and Counsel for the Parties will resolve any dispute based upon WFX's records and any documents and information you provide. Please be advised that the eligible Workweeks amount specified above is presumed to be correct unless the documents you submit contain convincing evidence otherwise.

☐ I disagree with the eligible Workweeks specified above and have submitted supporting documentation. I contend that my correct eligible Workweeks amount during the period from December 7, 2017 to July 19, 2022 is:

_____.

IV. ATTESTATION

If I am disputing my eligible Workweeks, I declare under penalty of perjury, under the laws of the United States, that the eligible Workweeks amount provided to me in this notice is not correct, that the eligible Workweeks amount I provide is true and accurate to the best of my knowledge, and that I have submitted documentation establishing the corrected eligible Workweeks amount.

If I am submitting name, address, and/or taxpayer ID number changes, I declare under penalty of perjury, under the laws of the United States, that I am authorized to make the name, address, and/or taxpayer ID number changes that I specify in this Class Form, and that I have submitted a completed, signed IRS form W-9 if necessary.

Sign your name here

Print the date here

Print your name here

If signing on behalf of an entity, company, etc., print your title or position here

IF NECESSARY, MAIL THIS FORM AND ANY SUPPORTING DOCUMENTATION TO:

[INSERT SETTLEMENT ADMINISTRATOR NAME AND ADDRESS]

PLEASE RETAIN A COPY OF THIS FORM AND ANY OTHER DOCUMENTS YOU SUBMIT FOR YOUR RECORDS

Information regarding the Class, Settlement, and the Action is contained in the Notice.