

1 Brian S. Kabateck, Esq. SBN 152054
(bsk@kbklawyers.com)
2 Richard L. Kellner, Esq. SBN 171416
(rlk@kbklawyers.com)
3 Joshua H. Haffner, Esq. SBN 188652
(jhh@kbklawyers.com)
4 KABATECK BROWN KELLNER LLP
644 South Figueroa Street
5 Los Angeles, California 90017
Tel: (213) 217-5000
6 Fax: (213) 217-5010

7 Attorneys for Plaintiff

8 Christopher C. McNatt, Jr. SBN 174559
cmcnett@scopelitis.com
9 SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP
2 North Lake Avenue, Suite 460
10 Pasadena, CA 91101
Tel: (626) 795-4700
11 Fax: (626) 795-4790

12 Attorneys for Defendant,
13 Pacer Cartage, Inc.

14 *[Additional Defense Counsel listed on next page]*

15 **UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

16 MANUELA RUELAS MENDOZA,
17 behalf of herself
and all others similarly situated,

18 Plaintiff,

19 vs.

20 PACER CARTAGE, INC.; and
21 DOES 1 through 100, inclusive,

22 Defendants.
23

CASE NO. 3:13cv2344-LAB (JMA)

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

1 James H. Hanson
jhanson@scopelitis.com
2 Angela S. Cash
acash@scopelitis.com
3 Ryan W. Wright
rwright@scopelitis.com
4 SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
10 West Market Street, Suite 1500
5 Indianapolis, IN 46204
Tel: (317) 637-1777
6 Fax: (317) 687-2414

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TABLE OF CONTENTS

1

2 A. DEFINITIONS 1

3 1. Action 1

4 2. Administrative Expenses 1

5 3. Attorney Fee Award 2

6 4. CAFA Notice 2

7 5. Claims 2

8 6. Class or Settlement Class 2

9 7. Class Counsel 3

10 8. Class Notice 3

11 9. Complaint 3

12 10. Court 3

13 11. Defendant 3

14 12. Defense Counsel 3

15 13. Derivative Claims 3

16 14. Final Approval and Fairness hearing 4

17 15. Final Effective Date 4

18 16. Hearing on Preliminary Approval 5

19 17. Incentive Award 5

20 18. Individual Settlement Amount 5

21 19. Net Settlement Amount 5

22 20. Opt-Out(s) 6

23 21. Opt-Out Request 6

24 22. Pacer 6

25 23. Parties 6

26 24. Plaintiff 6

27 25. Preliminary Approval Date 6

28 26. Released Claims 6

1	27.	Released Parties	6
2	28.	Settlement	7
3	29.	Settlement Administrator	7
4	30.	Settlement Class Member	7
5	31.	Settlement Class Period	7
6	32.	Settling Parties	7
7	33.	Stipulation	7
8	34.	Total Settlement Amount	7
9	B.	FACTUAL PROCEDURAL BACKGROUND OF ACTION	7
10	35.	Plaintiff's Complaint	7
11	36.	Discovery, Investigation and Research	8
12	37.	Allegations of Plaintiff and Benefits of Settlement	8
13	38.	Pacer's Denials of Wrongdoing and Liability and	
14		Benefits of Settlement	9
15	39.	Intent of Settlement	10
16	C.	CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT	
17		OF CLASS COUNSEL AND CLASS REPRESENTATIVES	11
18	40.	The Settlement Class	11
19	41.	Appointment of Class Counsel	11
20	42.	Appointment of Class Representatives	11
21	D.	SETTLEMENT TERMS AND CONSIDERATION	11
22	43.	Total Settlement Amount	11
23	44.	Incentive Award	11
24	E.	ATTORNEY FEES, COSTS, AND EXPENSES OF CLASS	
25		COUNSEL AND SETTLEMENT ADMINISTRATOR	12
26	45.	Class Counsel Fees and Expenses	12
27	46.	Settlement Administration Costs	13
28	F.	RELEASE BY THE CLASS AND PLAINTIFF	13

1	47.	Release of Claims	13
2	48.	Release of Claims by Plaintiff	13
3	49.	Release of Section 1542 Rights	14
4	G.	NOTICE AND CLAIMS PROCESS	15
5	50.	Settlement Administrator’s Duties	15
6	51.	Lists of Settlement Class Members	16
7	52.	Notice Packet	17
8	53.	Opt-Out Procedure	17
9	54.	Objections	18
10	55.	Retention of Claim Documents	19
11	H.	NULLIFICATION OF THIS STIPULATION OF SETTLEMENT	19
12	56.	Non-Approval of the Stipulation	19
13	57.	Pacer’s Right to Void Settlement	19
14	58.	Stay Upon Appeal	19
15	59.	Apportionment of Settlement Administrator Charges in the	
16		Event Of Settlement Failure	20
17	I.	DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL	20
18	60.	Preliminary Approval of and Notice to Classes of Settlement	20
19	61.	Final Approval	21
20	J.	DUTIES FOLLOWING FINAL COURT APPROVAL	21
21	62.	Pacer’s Duty to Fund Settlement	21
22	63.	Payments to and on Behalf of Settlement Class Members	21
23	64.	Remaining Payments	22
24	K.	MISCELLANEOUS PROVISIONS	22
25	65.	Parties’ Authority	22
26	66.	Mutual Full Cooperation	22
27	67.	No Prior Assignments	23
28	68.	No Admission	23

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

69. Enforcement Actions 24

70. Different Facts 24

71. Public Comments Regarding the Litigation or the Settlement 24

72. Governing Law 25

73. Attorney Fees, Costs and Expenses 26

74. Notices 26

75. Construction 26

76. Captions and Interpretations 27

77. Modification 27

78. Integration Clause 27

79. Binding Effect 27

80. Signatures of All Settlement Class Members Unnecessary to
be Binding 27

81. Counterparts 28

1 This Stipulation of Settlement of Class Action and Release (“Stipulation”) is
2 made and entered into by and between Plaintiff, Edwin Molina (“Molina”),
3 individually and as representative of the Settlement Class as defined below, and
4 Defendant, Pacer Cartage, Inc. (“Pacer”). This Stipulation is subject to the approval
5 of the Court pursuant to Fed. R. Civ. P. 23(c), and is made for the sole purpose of
6 consummating settlement of this Action on a class-wide basis subject to the
7 following terms and conditions. As detailed below, in the event the Court does not
8 enter an order granting final approval of the Settlement or the conditions precedent
9 are not met for any reason, this Stipulation shall be null and void and shall be of no
10 force or effect whatsoever.

11 **A. DEFINITIONS**

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

16 **1. Action.** “Action” shall mean the civil action originally filed on August
17 19, 2013 by Manuela Ruelas Mendoza (“Mendoza”) against Pacer in the San Diego
18 County Superior Court, under Case No. 37-2013-00063453-CU-OE-CTL, which
19 Pacer removed to the U.S. District Court, Southern District of California, under
20 Case No. 3:13cv2344-LAB (JMA). On August 26, 2014, the Court substituted
21 Molina as the new named plaintiff and class representative and dismissed Mendoza
22 as a named plaintiff and party to the Action.

23 **2. Administrative Expenses.** “Administrative Expenses” shall mean all
24 of the costs of administering the Settlement by the Settlement Administrator. The
25 Administrative Expenses will also be paid out of the Total Settlement Fund, and
26 Pacer shall have no responsibility for such costs and no liability for any costs other
27 than through its payment of the Total Settlement Fund in accordance with the terms
28 of the Settlement.

1 **3. Attorney Fee Award.** “Attorney Fee Award” means the amount
2 awarded by the Court to Class Counsel from the Total Settlement Amount, which
3 shall not exceed 30% of the Total Settlement Amount. Such amount shall be in full
4 and complete satisfaction of Class Counsel’s claim or request (and any request made
5 by any other attorneys) for payment of attorney fees, costs, disbursements, expenses,
6 and compensation in the Action.

7 **4. CAFA Notice.** “CAFA Notice” shall mean the notice of the Stipulation
8 required to be filed by Pacer with the appropriate federal and state agencies as
9 required by 28 U.S.C. § 1715(b).

10 **5. Claims.** “Claims” shall mean any and all wage and hour claims for
11 relief that were or could have been brought in the Action arising out of their alleged
12 employment with Pacer, including: (a) Pacer’s alleged misclassification of
13 Settlement Class members as independent contractors; (b) Pacer’s alleged failure to
14 pay overtime; (c) Pacer’s alleged failure to pay the California minimum wage for all
15 hours worked; (d) Pacer’s alleged failure to provide meal and rest breaks or
16 premium pay in lieu thereof; (e) Pacer’s alleged failure to reimburse business
17 expenses; (f) Pacer’s alleged unlawful deductions; (g) Pacer’s alleged failure to
18 timely pay all wages owed upon separation; (h) Pacer’s alleged failure to furnish
19 timely and accurate wage statements; (i) Pacer’s alleged failure to pay all wages
20 owed every pay period; (j) Pacer’s alleged unlawful, unfair, and deceptive business
21 practices in violation of the Cal. Business & Professions Code § 17200, *et seq.*
22 (“Section 17200”) and any and all claims for relief that were asserted or could have
23 been asserted in the Complaint; and (k) any penalties, liquidated damages, interest,
24 attorneys’ fees, or litigation costs allegedly due and owing by virtue of any of the
25 foregoing.

26 **6. Class or Settlement Class.** “Class” or “Settlement Class” shall be
27 defined as all current and former drivers who worked for Pacer in California as
28 drivers anytime during the Settlement Class Period. If the Court grants the Order

1 Directing Notice, Pacer will provide the names and pertinent information for all
2 persons who meet the Settlement Class definition (the “Class List”) to the
3 Settlement Administrator and Class Counsel within 21 days after the Preliminary
4 Approval Date.

5 7. **Class Counsel.** “Class Counsel” shall mean the attorneys of Kabateck
6 Brown Kellner LLP, 644 South Figueroa Street, Los Angeles, California 90017.

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

11 9. **Complaint.** “Complaint” shall mean the Second Amended Class
12 Action Complaint to be filed by Plaintiff prior to the Preliminary Approval Date
13 following the Court’s approval of a joint stipulation filed by the Parties seeking
14 leave for the filing of the Second Amended Class Action Complaint, which will
15 amend the Amended Complaint filed by Plaintiff on January 30, 2015, and the Class
16 Action Complaint filed by Mendoza on August 19, 2013, in this Action.

17 10. **Court.** “Court” shall mean the U.S. District Court for the Southern
18 District of California.

19 11. **Defendant.** “Defendant” shall mean Pacer.

20 12. **Defense Counsel.** “Defense Counsel” shall mean James H. Hanson,
21 Angela S. Cash, and Ryan W. Wright, Scopelitis Garvin, Light, Hanson, & Feary,
22 P.C., 10 W. Market Street, Suite 1500, Indianapolis, IN 46204; and Christopher C.
23 McNatt, Jr., Scopelitis, Garvin, Light, Hanson, & Feary, LLP, 2 North Lake
24 Avenue, Suite 460, Pasadena, CA 91101.

25 13. **Derivative Claims.** “Derivative Claims” shall mean all Claims and
26 claims derivative thereto, whether known or unknown, at law or in equity, which
27 Settlement Class Members may now have or may have as of the execution of the
28 Stipulation under Section 17200, the California Labor Code, the wage orders of the

1 California Industrial Welfare Commission, or other federal, state, or local law. The
2 derivative claims include, but are not limited to, claims for failing to promptly pay
3 all wages due and owing at the time of an employee's termination in violation of
4 Cal. Labor Code § 203; engaging in unlawful/unfair/fraudulent business practices in
5 violation of Section 17200; failing to provide accurate itemized wage statements in
6 violation of Cal. Labor Code § 226; any and all penalties pursuant to the Private
7 Attorney General Act of 2004 ("PAGA"), and any penalties, liquidated damages,
8 interest, attorneys' fees, or litigation costs allegedly due and owing by virtue of the
9 foregoing.

10 **14. Final Approval and Fairness Hearing.** "Final Approval and Fairness
11 Hearing" shall mean a hearing set by the Court for the purpose of determining the
12 fairness, adequacy, and reasonableness of the Settlement, which hearing shall be
13 scheduled to take place after the expiration of the 90-day notice period required for
14 the CAFA Notice.

15 **15. Final Effective Date.** "Final Effective Date" shall be the date when all
16 of the following events have occurred: (a) this Stipulation has been executed by all
17 parties and by Class Counsel and Defense Counsel; (b) the Court has preliminarily
18 reviewed the Settlement; (c) notice has been given to the Class Members providing
19 them with an opportunity to Opt-Out of the Settlement; (d) the Court has held a
20 Final Approval and Fairness Hearing and entered a final order and judgment
21 certifying the Settlement Class and approving this Stipulation; and (e) in the event
22 there are written objections filed prior to the Final Approval and Fairness Hearing
23 that are not later withdrawn, the later of the following events: (i) when the period
24 for filing any appeal, writ, or other appellate proceeding opposing the Settlement has
25 elapsed without any appeal, writ or other appellate proceeding having been filed; or
26 any appeal, writ, or other appellate proceeding opposing the Settlement has been
27 dismissed finally and conclusively with no right to pursue further remedies or relief
28 or (ii) any appeal, writ, or other appellate proceeding has upheld the Court's final

1 order with no right to pursue further remedies or relief. In this regard, it is the
2 intention of the Parties that the Settlement shall not become effective until the
3 Court's order approving the Settlement is completely final and there is no further
4 recourse by an appellant or objector who seeks to contest the Settlement. In the
5 event that no objections are filed, the Effective Date shall be after steps (a) through
6 (d) have been completed.

7 **16. Hearing on Preliminary Approval.** "Hearing on Preliminary
8 Approval" shall mean the hearing held on the motion for preliminary approval of the
9 Settlement.

10 **17. Incentive Award.** "Incentive Award" shall mean any additional
11 monetary payment provided to Plaintiff for his service, efforts, risk, and time
12 expended on behalf of the Settlement Class in this Action, not to exceed \$10,000,
13 which amount Pacer has agreed not to oppose.

14 **18. Individual Settlement Amount.** The "Individual Settlement Amount"
15 shall mean the prorated amount based on weeks worked during the Settlement Class
16 Period, which is ultimately distributed to each Settlement Class Member. The
17 Individual Settlement Amount for each Settlement Class Member shall be calculated
18 (a) by multiplying the Net Settlement Fund by a fraction the numerator of which is
19 the total number of weeks worked by each the Settlement Class Member and the
20 denominator of which is the total number of weeks worked by all Settlement Class
21 Members. No portion of the Individual Settlement Amount will constitute wages in
22 the form of backpay or otherwise, and each Settlement Class Member will be issued
23 an Internal Revenue Service ("IRS") Form 1099 for such payment. Each Settlement
24 Class Member will also be solely responsible for the payment of any and all taxes
25 with respect to his or her Individual Settlement Amount. Defendant will not be
26 responsible for any taxes due on such payments.

27 **19. Net Settlement Amount.** "Net Settlement Amount" means the Total
28 Settlement Amount paid by Pacer less Administrative Expenses, the Attorney Fee

1 Award, and the Incentive Award, and shall be the maximum amount to be
2 distributed to Settlement Class Members.

3 **20. Opt-Out(s).** “Opt-Out(s)” shall mean any and all persons who timely
4 and validly request exclusion from the Settlement Class in accordance with the
5 terms of the Class Notice.

6 **21. Opt-Out Request.** “Opt-Out Request” shall mean a timely and valid
7 request for exclusion from the Settlement Class in accordance with the terms of the
8 Class Notice.

9 **22. Pacer.** “Pacer” shall mean Pacer Cartage, Inc.

10 **23. Parties.** “Parties” shall mean Plaintiff and Defendant.

11 **24. Plaintiff.** “Plaintiff” shall mean Molina who was substituted for
12 Mendoza as the new named plaintiff and class representative on August 26, 2014.

13 **25. Preliminary Approval Date.** “Preliminary Approval Date” shall
14 mean the date upon which the Court enters an order preliminary approving this
15 Stipulation.

16 **26. Released Claims.** “Released Claims” shall mean the Claims, the
17 Derivative Claims, and all rights under the Cal. Civil Code § 1542 (“Section 1542”)
18 that relate to and arise from any and all claims alleged in the Complaint, including
19 derivative claims, interest, penalties, attorney fees, expenses, administrative costs,
20 incentive awards, and taxes. Other than for Plaintiff, Released Claims do not
21 include or release any person, party, or entity from individual claims, if any, held by
22 a Settlement Class Member for workers’ compensation, wrongful discharge, or
23 retaliation claims unrelated to the Released Claims.

24 **27. Released Parties.** “Released Parties” shall mean Pacer, and its present
25 and former parent companies, subsidiaries, divisions, affiliates, related companies,
26 joint ventures, and each of their respective present and former officers, directors,
27 shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors,
28 representatives, consultants, pension and welfare benefit plans, plan fiduciaries,

1 administrators, trustees, general and limited partners, predecessors, successors and
2 assigns.

3 **28. Settlement.** “Settlement” shall mean the settlement between the
4 Parties, which is memorialized in this Stipulation.

5 **29. Settlement Administrator.** “Settlement Administrator” shall mean
6 Kurtzman Carson Consultants, LLC (“KCC”), which the Parties have agreed upon
7 and, pending approval by the Court, will be responsible for administration of the
8 Settlement and related matters in accordance with the terms of the Stipulation, or
9 another neutral administrator mutually agreed to by the Parties.

10 **30. Settlement Class Member.** “Settlement Class Member” shall mean
11 any person who is a member of the Settlement Class or, if such person is
12 incompetent or deceased, the person’s legal guardian, executor, heir, or successor-
13 in-interest, and who does not submit an Opt-Out Request Form.

14 **31. Settlement Class Period.** “Settlement Class Period” shall mean
15 August 19, 2009 to the date of preliminary approval of the Settlement.

16 **32. Settling Parties.** “Settling Parties” shall mean Plaintiff, the Settlement
17 Class, and Pacer.

18 **33. Stipulation.** “Stipulation” shall mean this Stipulation of Settlement
19 and Release of Class Action, including any attached exhibits.

20 **34. Total Settlement Amount.** “Total Settlement Amount” shall be
21 \$4,250,000, the total fund to be paid by Pacer to settle the Action, which includes
22 amounts to be paid to Settlement Class Members, the Attorney Fee Award, the
23 Incentive Award, and the Administrative Expenses, no portion of which will revert
24 to Pacer.

25 **B. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

26 **35. Plaintiff’s Complaint.** On August 29, 2013, Mendoza filed her Class
27 Action Complaint in the San Diego County Superior Court, under Case No. 37-
28 2013-00063453-CU-OE-CTL, which Pacer removed to the U.S. District Court,

1 Southern District of California, under Case No. 3:13cv2344-LAB (JMA). On
2 August 26, 2014, Molina was substituted as the new named plaintiff and class
3 representative and Mendoza was dismissed as a named plaintiff and party. By the
4 time of preliminary approval, the Complaint will have been amended twice since the
5 Action was originally filed. In the Complaint, Plaintiff alleges the following causes
6 of action: (a) Pacer misclassified Settlement Class members as independent
7 contractors; (b) Pacer failed to pay overtime; (c) Pacer failed to pay the California
8 minimum wage for all hours worked; (d) Pacer failed to provide meal and rest
9 breaks or premium pay in lieu thereof; (e) Pacer failed to timely pay all wages owed
10 upon separation; (f) Pacer failed to furnish timely and accurate wage statements; (g)
11 Pacer failed to pay all wages owed every pay period; and (h) Pacer engaged in
12 unlawful, unfair, and deceptive business practices in violation of Section 17200; and
13 seeks penalties, liquidated damages, interest, attorney fees, or litigation costs
14 allegedly due and owing by virtue of any of the foregoing. Pacer has denied and
15 continues to deny any liability to Plaintiff and the Settlement Class and has raised
16 various defenses to the Complaint.

17 **36. Discovery, Investigation and Research.** Class Counsel has conducted
18 discovery and a thorough investigation of the facts during the prosecution of the
19 Action. This discovery, investigation, and prosecution has included, among other
20 things, (a) multiple meetings and conferences with Plaintiff and Settlement Class
21 Members; (b) discovery; (c) analysis of the legal positions taken by Pacer; (d)
22 investigation into the viability of class treatment of the Claims asserted in this
23 Action; (e) analysis of potential class-wide damages; (f) research of the applicable
24 law with respect to the Claims asserted in the Action and the potential defenses,
25 thereto; and (g) assembling data for calculating damages. The Parties have engaged
26 in sufficient investigation and discovery to assess the relative merits of the Claims
27 of Plaintiff and Pacer's defenses to them.

28 **37. Allegations of Plaintiff and Benefits of Settlement.** The discovery

1 and investigation conducted in this matter, as well as discussions between counsel,
2 have been adequate to give Plaintiff and Class Counsel a sound understanding of the
3 merits of their positions, to evaluate the worth of the claims of the Settlement Class
4 and to compromise the issues on a fair and equitable basis. Class Counsel is
5 knowledgeable about and has done extensive research with respect to the applicable
6 law and practical defenses to the Claims of the Settlement Class. This Settlement
7 was reached with the assistance of an experienced mediator, Robert J. Kaplan, after
8 arm's length bargaining by the Parties during an extended mediation session.

9 Plaintiff and Class Counsel believe that the Claims and contentions asserted
10 in the Action have merit. However, Plaintiff and Class Counsel recognize and
11 acknowledge the expense and delay of continued lengthy proceedings necessary to
12 prosecute the Action against Pacer through trial and appeals, which could take years
13 to complete. Class Counsel has taken into account the uncertain outcome and the
14 risk of any litigation, the risk of continued litigation in complex actions such as this,
15 as well as the difficulties and delays inherent in such litigation, and the potential
16 difficulty of maintaining the Action as a class action. Class Counsel is mindful of
17 the inherent problems of proof under, and possible defenses to, the Claims alleged in
18 the Action. Class Counsel believes that the Settlement set forth in this Stipulation
19 confers substantial benefits upon Plaintiff and each of the Settlement Class
20 Members and that an independent review of this Stipulation by the Court in the
21 approval process will confirm this conclusion. Based on their own independent
22 investigation and evaluation, Class Counsel has determined that the Settlement set
23 forth in the Stipulation is fair, reasonable, and adequate and is in the best interests of
24 Plaintiff and the Settlement Class Members.

25 **38. Pacer's Denials of Wrongdoing and Liability and Benefits of**
26 **Settlement.** Pacer has denied and continues to deny each and all of the Claims and
27 contentions alleged by Plaintiff in the Action. Pacer has expressly denied and
28 continues to deny all charges of wrongdoing or liability against it arising out of any

1 of the conduct, statements, acts or omissions alleged, or that could have been
2 alleged, in the Action. Pacer contends that it complied in good faith with California
3 wage and hour laws, including, but not limited to, the Cal. Labor Code, the
4 California Business & Professions Code, and the IWC Wage Orders. Pacer further
5 denies that, for any purpose other than settling this Action, these claims are
6 appropriate for class or representative treatment. Additionally, Pacer contends that
7 the Settlement Class Members were properly classified as independent contractors
8 and the California wage and hour laws do not apply. Nonetheless, Pacer has
9 concluded that further conduct of the Action would be protracted and expensive and
10 that it is desirable that the Action be fully and finally settled in the manner and upon
11 the terms and conditions set forth in this Stipulation in order to limit further
12 expense, inconvenience and distraction, to dispose of burdensome and protracted
13 litigation, and to permit the operation of Pacer's business without further expensive
14 litigation and the distraction and diversion of its personnel with respect to matters at
15 issue in the Action. Pacer has also taken into account the uncertainty and risks
16 inherent in any litigation, especially in complex cases such as the Action. Pacer has,
17 therefore, determined that it is desirable and beneficial to it that the Action be settled
18 in the manner and upon the terms and conditions set forth in this Stipulation. Pacer
19 and Defense Counsel also agree that the Settlement is fair, reasonable, and adequate
20 and in the best interest of the Settlement Class Members.

21 **39. Intent of Settlement.** The Settlement set forth herein is intended to
22 resolve all disputes between the Parties arising out of the Action and achieve the
23 following: (a) entry of an order approving the Class Settlement and granting the
24 monetary and other relief set forth in this Stipulation; (b) resolution of all disputes
25 between the Parties arising out of the Action; (c) discharge of the Released Parties
26 from liability for any and all of the Released Claims; and (d) entry of judgment and
27 dismissal with prejudice of the Action.

28

1 C. **CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF**
2 **CLASS COUNSEL AND CLASS REPRESENTATIVES**

3 **40. The Settlement Class.** For the purpose of this Stipulation and the
4 Settlement of this Action only, the Parties stipulate to the conditional class
5 certification of the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3).
6 The Settlement Class is defined in Paragraph 7. As of October 31, 2014, the Class
7 consists of 652 drivers who drove for Pacer. To the extent any of the 652 drivers
8 who drove for Pacer also drove for any company related to Pacer, the weeks driven
9 for the related companies will be included in such drivers' pro-rata calculation of
10 Individual Settlement Amount.

11 **41. Appointment of Class Counsel.** For purposes of this Stipulation and
12 subject to the Court's approval, the Parties hereby stipulate to the appointment of
13 Class Counsel as counsel for the Settlement Class and the effectuation of the
14 Settlement pursuant to this Stipulation.

15 **42. Appointment of Class Representative.** For purposes of this
16 Stipulation and subject to the Court's approval, the Parties hereby stipulate to the
17 appointment of the Plaintiff as class representative for the Settlement Class ("Class
18 Representative").

19 D. **SETTLEMENT TERMS AND CONSIDERATION**

20 **43. Total Settlement Amount.** The Total Settlement Amount and other
21 actions and forbearances taken by Pacer shall constitute adequate consideration for
22 the Settlement and will be made in full and final settlement of (a) the Released
23 Claims; (b) the Administrative Expenses, the Attorney Fee Award, and the Incentive
24 Award; and (c) any other obligation of Pacer under this Stipulation.

25 **44. Incentive Award.** Plaintiff may receive an Incentive Award of not
26 more than \$10,000, subject to Court approval, for his effort on behalf of the
27 Settlement Class in this Action. These efforts include identifying the Claims made
28 in this Action, seeking counsel with regard to those Claims, assisting in

1 investigation of the Claims, consulting with Class Counsel, and exposing himself to
2 a substantial potential for an award of costs and attorney fees to Pacer in the event
3 that Pacer prevailed on summary judgment or at trial. Pacer shall not oppose any
4 request by Plaintiff for an Incentive Award as identified above, provided that
5 Plaintiff execute the release provided for in this Stipulation, which release will be
6 effective upon the Effective Date. Any Incentive Award approved by the Court
7 shall be paid to Plaintiff from the Total Settlement Amount and shall be in addition
8 to any distribution to which he may otherwise be entitled as a Settlement Class
9 Member. The Incentive Award shall not be considered wages, and the Settlement
10 Administrator shall issue Plaintiff an IRS Form 1099 for such payment. Plaintiff
11 shall be responsible for the payment of any and all taxes with respect to his
12 Incentive Award and shall indemnify Pacer and hold Pacer harmless from any and
13 all liability with regard thereto.

14 **E. ATTORNEY FEES, COSTS, AND EXPENSES OF CLASS COUNSEL**
15 **AND SETTLEMENT ADMINISTRATOR**

16 **45. Class Counsel Fees and Expenses.** As part of the motion for final
17 approval of the Settlement, Class Counsel may submit an application for an award
18 of attorney fees, costs, and expenses in an amount not to exceed 30% of the Total
19 Settlement Amount paid, which will be heard by the Court at the Final Approval and
20 Fairness Hearing. Pacer agrees not to object to any such fee, costs, or expenses in
21 an amount equal to or less than 30% of the Total Settlement Fund. As a condition of
22 this Settlement, Class Counsel have agreed to pursue their fees, costs, and expenses
23 only in the manner reflected by this Paragraph. Any fees, costs, and expenses
24 awarded by the Court shall be paid to Class Counsel from the Total Settlement
25 Amount and shall not constitute payment to any Settlement Class Members. Any
26 amount awarded to Class Counsel by the Court from the Total Settlement Amount
27 shall be in full payment of their attorney fees, costs, and expenses, and neither the
28 Plaintiff nor Class Counsel shall be entitled to any further award of attorney fees,

1 costs, or expenses from Pacer.

2 **46. Settlement Administration Costs.** The Parties have agreed that
3 KCC shall serve as Settlement Administrator to administer the Settlement, and the
4 Administrative Expenses will be paid from the Total Settlement Amount.

5 **F. RELEASE BY THE CLASS AND PLAINTIFF**

6 **47. Release of Claims.** Upon the Final Effective Date, and except as to
7 such rights or claims as may be created by this Stipulation, each member of the
8 Settlement Class (other than those who file Opt-Out Requests and do not rescind
9 their Opt-Out Requests) and Plaintiff will fully release and discharge the Released
10 Parties from any and all of the Released Claims. This release by the Settlement
11 Class Members shall not apply to any individual claims held by the Settlement Class
12 for worker's compensation, wrongful discharge, or retaliation claims unrelated to
13 the Released Claims.

14 **48. Release of Claims by Plaintiff.** Plaintiff, in exchange for receipt of a
15 Incentive Award, on behalf of himself and his heirs, executors, administrators, and
16 representatives, shall and does hereby forever release, discharge and agree to hold
17 harmless the Released Parties from the Released Claims and any and all charges,
18 complaints, claims, liabilities, obligations, promises, agreements, controversies,
19 damages, actions, causes of action, suits, rights, demands, costs, losses, debts and
20 expenses (including attorney fees and costs), known or unknown, at law or in equity,
21 which he may now have or may have after the signing of this Stipulation, against
22 Defendant arising out of or in any way connected with his alleged employment with
23 Defendant, including claims alleged in the Complaint, his relationship with
24 Defendant as an owner-operator, and any and all transactions, occurrences, or
25 matters between the Parties occurring prior to the date of final approval of this
26 Stipulation. Without limiting the generality of the foregoing, this release shall
27 include, but not be limited to, any and all claims under the (a) Americans With
28 Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as

1 amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e)
2 the Age Discrimination in Employment Act, as amended; (f) the Equal Pay Act; (g)
3 the Employee Retirement Income Security Act, as amended; (h) the Consolidated
4 Omnibus Budget Reconciliation Act; (i) the Rehabilitation Act of 1973; (j) the
5 Family and Medical Leave Act; (k) the Civil Rights Act of 1966; (l) the California
6 Fair Employment and Housing Act; (m) the California Constitution; (n) the
7 California Labor Code; (o) the California Government Code; (p) the California Civil
8 Code; and (q) any and all other federal, state and local statutes, ordinances,
9 regulations, rules and other laws, and any and all claims based on constitutional,
10 statutory, common law or regulatory grounds as well as any other claims based on
11 theories of wrongful or constructive discharge, breach of contract or implied
12 contract, fraud, misrepresentation, promissory estoppel or intentional and/or
13 negligent infliction of emotional distress, or damages under any other federal, state
14 or local statutes, ordinances, regulations, rules or laws. This release is for any and
15 all relief, no matter how denominated, including, but not limited to, back pay, front
16 pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated
17 damages, punitive damages, damages for pain and suffering, and attorney fees and
18 costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless
19 Defendant and the Released Parties from any and all claims for attorney fees and
20 costs arising out of the matters released in this Stipulation.

21 **49. Release of Section 1542 Rights.** It is the desire of the Parties to fully,
22 finally, and forever settle, compromise, and discharge the disputes and claims
23 asserted in the Action against Defendants, including the Released Claims, and the
24 above release of claims provided by this Stipulation includes claims that Plaintiff
25 and/or any Settlement Class Member does not know or suspect to exist in his or her
26 favor against the Released Parties. Plaintiff and each Settlement Class Member
27 waive all rights and benefits afforded by Section 1542 as they relate to the Released
28 Claims and do so understanding the significance of that waiver. Section 1542

1 provides:

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

8 As such, Plaintiff and the Settlement Class Members understand and agree that they
9 are providing the Released Parties with a full and complete release with respect to
10 the Released Claims.

11 This Stipulation is intended to include within its effect any and all
12 claims, damages, causes of action, and claims for attorney fees, that were or could
13 have been asserted in the Action (including the Released Claims). Subject to the
14 terms and conditions of this Stipulation and upon Final Approval of this Stipulation,
15 all such claims, damages, causes of action, and claims for attorney fees, that were or
16 could have been asserted in this Action (including the Released Claims) are deemed
17 to be fully and finally resolved and are to be dismissed, with prejudice, as to
18 Plaintiff and each and every Settlement Class Member, except as to those who
19 timely submit Opt-Out Request Forms.

20 **G. NOTICE AND CLAIM PROCESS**

21 **50. Settlement Administrator's Duties.** The Settlement Administrator
22 will be responsible for calculating the Individual Settlement Amount to be paid to
23 each Settlement Class Member, locating correct Settlement Class Members'
24 addresses, mailing the Class Notice (the "Notice Packet") to Settlement Class
25 Members, using standard devices to obtain forwarding addresses, independently
26 reviewing and verifying documentation associated with any submitted Opt-Out
27 Requests, handling inquiries from Settlement Class Members, applying the formula
28 for determining the Individual Settlement Amounts, drafting and mailing the
settlement checks to Settlement Class Members, issuing IRS 1099 Forms, issuing
payments from the Net Settlement Amount to Class Counsel in accordance with this

1 Stipulation and the Court's order thereon, filing necessary reports relating to the
2 Settlement payments with the proper governmental authorities, and performing such
3 other tasks as set forth herein or as the Parties mutually agree or the Court orders.
4 All disputes relating to administration of the Settlement by the Settlement
5 Administrator shall be referred to the Court, if necessary, which will have
6 continuing jurisdiction over the terms and conditions of this Stipulation, until all
7 payments and obligations contemplated by this Stipulation have been completed.
8 Prior to presenting any issue to the Court, counsel for the Parties will confer in good
9 faith to resolve the dispute and, before seeking Court intervention, shall refer the
10 dispute to further mediation with Robert J. Kaplan.

11 **51. List of Settlement Class Members.** Within 21 days after the
12 Preliminary Approval Date, Pacer shall provide to the Settlement Administrator and
13 Class Counsel a Class List, which shall consist of all Settlement Class Members
14 including their last known addresses, telephone numbers, and the number of weeks
15 worked during the Settlement Class Period (the "Database"). The Class List shall be
16 marked "Confidential – Attorney's and Settlement Administrator's Eyes Only."
17 Class Counsel represents, warrants, covenants and agrees that (a) Class Counsel
18 shall hold the Database, including any copies thereof, in strictest confidence and
19 shall not disclose or divulge its contents to any Settlement Class Member, including
20 Plaintiff, or to any third party; (b) the Database shall be kept in secure facilities; and
21 (c) the Database shall be used exclusively for administration of the Settlement
22 pursuant to this Stipulation and for no other purpose, including, but not limited to,
23 fact-gathering, discovery, or communication with individuals contained in the
24 Database for any purpose, other than administration of the Settlement pursuant to
25 this Stipulation. In addition, Pacer shall provide to the Settlement Administrator
26 only, the social security number or tax identification number of every Settlement
27 Class Member for use in paying Claims, and to facilitate performance of a "skip
28 trace" to obtain accurate and updated contact information for Settlement Class

1 Members who are otherwise unreachable.

2 **52. Notice Packet.** Within 14 days after receipt of the Database, or as soon
3 thereafter as practicable, the Settlement Administrator shall send the Notice Packet,
4 which shall be the Class Notice and Opt-Out Request Form, via first-class mail to
5 each Settlement Class Member. The Class Notice will fully describe the Settlement,
6 the Released Claims, the amount of attorney fees, costs, and expenses Class Counsel
7 will seek, and set forth the Settlement Class Members' ability to object or submit an
8 Opt-Out Request to be excluded from the Settlement and the applicable deadlines
9 for each. The Class Notice will include the Court-established deadlines for filing
10 objections and an Opt-Out Request. The Class Notice shall also contain an easily
11 understood statement alerting the Settlement Class Members that, by participating in
12 the Settlement, the Settlement Class Member is also executing a release and waiver
13 of all Released Claims against Pacer.

14 **53. Opt-Out Procedure.** In order for a Settlement Class Member to
15 request exclusion (i.e., Opt-Out) from the Settlement, the Opt-Out Request must be
16 postmarked no later than 45 days after the Notice Packet was initially mailed by the
17 Settlement Administrator (the "Opt-Out Deadline"). Any returned envelopes
18 containing the Class Notice from the initial mailing, which have forwarding
19 addresses, will be used by the Settlement Administrator to locate Settlement Class
20 Members. In the event that, prior to the Opt-Out Deadline, any Class Notice mailed
21 to a Settlement Class Member is returned as having been undelivered by the U.S.
22 Postal Service, the Settlement Administrator shall perform a skip trace search or
23 other reasonable methods within seven days and seek an address correction for such
24 Settlement Class Member(s). A second Notice Packet will be sent to any new or
25 different address obtained within seven days thereafter. The returned Opt-Out
26 Request must be filed and/or delivered no later than 21 days after the Opt-Out
27 Deadline.

28 It will be conclusively presumed that, if an envelope containing the Class

1 Notice has not been returned within 30 days of the mailing, the Settlement Class
2 Member received the Class Notice. However, a Class Member may ask the
3 Settlement Administrator for a substitute Notice Packet at any time up to the Opt-
4 Out Deadline. Twenty-eight days prior to the Final Approval Hearing, the
5 Settlement Administrator shall provide Class Counsel and Defense Counsel with a
6 Declaration of Due Diligence and Proof of Mailing (“Declaration”) with regard to
7 the mailing of the Class Notice and its attempts to locate Settlement Class Members.
8 The Declaration shall specify the number of Settlement Class Members to whom
9 Class Notices were sent, the number of Settlement Class Members to whom Class
10 Notices were not delivered, and the number of Opt-Outs. Class Counsel shall file
11 this Declaration with the Court.

12 **54. Objections.** The Class Notice shall inform the Settlement Class
13 Members of their right to object to the Settlement. Any Settlement Class Member
14 who wishes to object to the Settlement must file and deliver a written objection with
15 the Court and serve copies of the written objection to Class Counsel and Defense
16 Counsel no later than the Opt-Out Deadline. The date of delivery of the written
17 objection is deemed to be the date the objection is deposited in the U.S. mail,
18 postage prepaid, as evidenced by the postmark. The objection must include the case
19 name and number and must set forth, in clear and concise terms a statement of the
20 reasons why the objector believes that the Court should find that the proposed
21 Settlement is not fair, reasonable, and adequate and not in the best interest of the
22 Settlement Class Members, the reasons why the Settlement should not be approved,
23 and/or the reasons why the Settlement Class Member disputes his or her Individual
24 Settlement Amount, including the legal and factual arguments supporting the
25 objection. If an objector also wishes to appear at the Final Approval and Fairness
26 Hearing, in person or through an attorney, he or she must *also* file a notice of their
27 intention to appear at the same time as the objection is filed. Copies of any
28 objection or notice of intention to appear must be simultaneously served on Class

1 Counsel and Defense Counsel. Unless otherwise ordered by the Court, Settlement
2 Class Members shall not be entitled to speak at the Final Approval and Fairness
3 Hearing unless they have submitted a timely written objection and notice of
4 intention to appear pursuant to this Paragraph. Settlement Class Members who have
5 properly and timely submitted objections and notice of intention to appear may
6 appear at the Final Approval and Fairness Hearing, either in person or through an
7 attorney retained at their own expense.

8 **55. Retention of Claim Documents.** The Settlement Administrator shall
9 maintain the original versions of completed Opt-Out Requests and all other
10 documents received throughout the administration of the Settlement. The
11 Settlement Administrator shall make the original versions of such forms available to
12 Class Counsel or Defense Counsel upon request.

13 **H. NULLIFICATION OF THIS STIPULATION OF SETTLEMENT**

14 **56. Non-Approval of the Stipulation.** If (a) the Court should for any
15 reason decline to approve this Stipulation in the form agreed to by the Parties, (b)
16 the Court should for any reason fail to enter a judgment and dismissal with prejudice
17 of the Action, or (c) the judgment and dismissal is reversed, modified or declared or
18 rendered void, then the Settlement and class certification shall be considered null
19 and void, and neither the Settlement, class certification, nor any of the related
20 negotiations or proceedings, shall be of any force or effect, and the Parties shall
21 stand in the same position, without prejudice, as if the Settlement had been neither
22 entered into nor filed with the Court. Notwithstanding the foregoing, the Parties
23 may attempt in good faith to cure any perceived defects in the Stipulation to
24 facilitate approval.

25 **57. Pacer's Right to Void Settlement.** If ten percent or more of the
26 Settlement Class timely submit Opt-Out Requests, Pacer shall have the exclusive
27 right to void this Settlement.

28 **58. Stay Upon Appeal.** In the event of a timely appeal from the judgment

1 and dismissal, the judgment shall be stayed, no payments shall be distributed from
2 the Total Settlement Amount to Settlement Class Members, Plaintiff, or Class
3 Counsel, and the actions required by this Stipulation shall not take place until all
4 appeal rights have been exhausted by operation of law.

5 **59. Apportionment of Settlement Administrator Charges in the Event**
6 **of Settlement Failure.** In the event that the Settlement is not finally approved,
7 Plaintiff and Pacer shall be equally responsible for any amount expended by the
8 Settlement Administrator.

9 **I. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

10 **60. Preliminary Approval of and Notice to Classes of Settlement.**
11 Promptly after execution of this Stipulation, Class Counsel shall request the Court to
12 preliminarily approve this Settlement and enter an order accomplishing the
13 following: (a) scheduling a preliminary hearing on the question of whether the
14 proposed settlement should be preliminarily considered as fair, reasonable, and
15 adequate as to the Settlement Class Members; (b) approving as to form and content
16 the proposed Class Notice attached as **Exhibit 1**; (c) directing the mailing of the
17 Notice Packet by first class mail to the Settlement Class Members; (d) preliminarily
18 certifying the Settlement Class for purposes of Settlement; (e) preliminarily
19 approving Plaintiff as an adequate Class Representative; (f) preliminarily approving
20 Class Counsel as counsel for the Class; (g) preliminarily approving the costs of
21 settlement administration payable to the Settlement Administrator; (h) setting a
22 deadline for Plaintiff to file a motion for final approval, and a date for the Final
23 Approval and Fairness Hearing; and (i) setting a deadline for Class Counsel to file a
24 application for an award of attorney fees, costs, and expenses, and for approval of
25 the Incentive Award to Plaintiff. Defense Counsel shall file a notice of non-
26 opposition or join in the motion so long as the motion is consistent with the terms of
27 the Stipulation.

28

1 **61. Final Approval.** In connection with the motion for final approval and
2 the Final Approval and Fairness Hearing provided for in this Stipulation, the Parties
3 will submit a proposed final order: (a) finally approving the Settlement, adjudging
4 the terms thereof to be fair, reasonable, and adequate, and directing consummation
5 of its terms and provisions; (b) finally approving Class Counsel as counsel for the
6 Class and approving the payment of Class Counsel's application for an award of
7 attorney fees, costs, and expenses as described in Paragraph 40 of this Stipulation;
8 (c) finally approving Plaintiff as an adequate Class Representative and approving
9 the payment of the Incentive Award, if any, to the Class Representative; (d) finally
10 approving the payment of the Administrative Expenses to the Settlement
11 Administrator for costs of administering the Settlement; and (e) requesting an Order
12 granting final approval of the Settlement and entry of Judgment thereon.

13 **J. DUTIES FOLLOWING FINAL COURT APPROVAL**

14 **62. Pacer's Duty to Fund Settlement.** Within 30 days following the Final
15 Effective Date, Pacer shall transmit to the Settlement Administrator the Total
16 Settlement Amount, which will be used to pay (a) the Individual Settlement
17 Amounts for all Settlement Class Members; (b) the total amount of the Incentive
18 Award, as approved by the Court; (c) the Administrative Expenses; and (d) the total
19 amount of the Attorney Fee Award, as approved by the Court.

20 **63. Payments to and on behalf of Settlement Class Members.** Within
21 14 days of receiving the Total Settlement Amount, the Settlement Administrator
22 shall issue the payment of the Individual Settlement Amounts to Settlement Class
23 Members. In the event that such a Settlement Class Member is deceased at the time
24 the payment is issued, payment shall be made payable to the Settlement Class
25 Member's estate and delivered to the executor or administrator of that estate unless
26 the Settlement Administrator has received a properly completed affidavit or
27 declaration pursuant to Cal. Probate Code § 13101, in which case payment shall be
28 made to the affiant(s) or declarant(s) as appropriate under such laws. Within 14

1 days of making the payments, the Settlement Administrator shall file with the Court
2 and serve on Class Counsel and Defense Counsel a declaration of payment. Checks
3 for Individual Settlement Amounts not deposited or cashed within 90 days from the
4 date they are issued will not be re-issued unless the Settlement Class Member
5 demonstrates that the check was not received with sufficient time to deposit or cash
6 it or that other circumstances prevented the Settlement Class Member from
7 depositing or cashing the check. The total amount of all such uncashed checks shall
8 be sent to the State of California as “unclaimed property.” In such event, the
9 Settlement Class Member will remain bound by the terms of the Stipulation.

10 **64. Remaining Payments.** Within 14 days of receiving the Total
11 Settlement Amount, the Settlement Administrator shall issue the following checks:
12 (a) to Plaintiff, the amount of the Incentive Award as approved by the Court, (b) to
13 Class Counsel, the Attorney Fee Award as approved by the Court, and (c) to the
14 Settlement Administrator, the Administrative Expenses as approved by the Court.

15 **K. MISCELLANEOUS PROVISIONS**

16 **65. Parties’ Authority.** The signatories hereto, including any person
17 executing this Stipulation on behalf of a corporate signatory, warrant and represent
18 that they are fully authorized to enter into this Stipulation and bind the Parties hereto
19 to the terms and conditions hereof.

20 **66. Mutual Full Cooperation.** The Parties agree to fully cooperate with
21 each other to accomplish the terms of this Stipulation, including but not limited to,
22 execution of such documents and to take such other action as may reasonably be
23 necessary to implement the terms of this Stipulation. The Parties to this Stipulation
24 shall use their best efforts, including all efforts contemplated by this Stipulation and
25 any other efforts that may become necessary by order of the Court, or otherwise, to
26 effectuate this Stipulation and the terms set forth herein. As soon as practicable
27 after execution of this Stipulation, Class Counsel shall, with the assistance and
28 cooperation of Pacer and Defense Counsel, take all necessary steps to secure the

1 Court's approval of the Settlement. Further, the Parties agree to abide by all of the
2 Settlement terms in good faith and to use their best efforts to defend this Settlement
3 from any legal challenge, whether by appeal or collateral attack.

4 **67. No Prior Assignments.** The Parties hereto represent, covenant, and
5 warrant that they have not directly or indirectly, assigned, transferred, encumbered,
6 or purported to assign, transfer, or encumber to any person or entity any portion of
7 any liability, claim, demand, action, cause of action or rights released and
8 discharged by this Stipulation.

9 **68. No Admission.** Nothing contained herein, nor the consummation of
10 this Stipulation, is to be construed or deemed an admission of liability, culpability,
11 negligence, or wrongdoing on the part of Pacer or any of the other Released Parties
12 toward Plaintiff, the Settlement Class Members, or any other person. Each of the
13 Parties hereto has entered into this Stipulation with the intention of avoiding further
14 disputes and litigation with the attendant inconvenience, expenses and
15 contingencies. Nothing herein shall constitute any admission by Pacer of
16 wrongdoing or liability, of the truth of any factual allegations in the Action or that
17 the Action was properly brought as a class or representative action other than for
18 settlement purposes. To the contrary, Pacer has denied and continues to deny each
19 and every material factual allegation asserted by Plaintiff in the Complaint and each
20 and every alleged claim asserted in the Action. To this end, the Settlement of the
21 Action, the negotiation and execution of this Stipulation, and all acts performed or
22 documents executed pursuant to or in furtherance of this Stipulation are not, shall
23 not be deemed to be, and may not be used as, an admission or evidence of any
24 wrongdoing or liability on the part of Pacer or of the truth of any of the factual
25 allegations in the Complaint filed in the Action; and are not, shall not be deemed to
26 be, and may not be used as, an admission or evidence of any fault or omission on the
27 part of Pacer in any civil, criminal or administrative proceeding in any court,
28 administrative agency or other tribunal. This Stipulation is a settlement document

1 and shall, pursuant to Cal. Evid. Code § 1152 and/or Federal Rule of Evidence 408,
2 be inadmissible in evidence in any proceeding, except an action or proceeding to
3 approve the Settlement, and/or interpret or enforce this Stipulation. The stipulation
4 for class certification as part of this Stipulation is for settlement purposes only and
5 if, for any reason, the Settlement is not approved, the stipulation will be of no force
6 or effect.

7 **69. Enforcement Actions.** Except as otherwise provided in this
8 Stipulation, in the event that one or more of the Parties to this Stipulation institutes
9 any legal action or other proceeding against any other Party or Parties to enforce the
10 provisions of this Stipulation or to declare rights and/or obligations under this
11 Stipulation, the successful Party or Parties shall be entitled to recover from the
12 unsuccessful Party or Parties reasonable attorney fees and costs, including expert
13 witness fees, incurred in connection with any enforcement actions.

14 **70. Different Facts.** The Parties hereto, and each of them, acknowledge
15 that, except for matters expressly represented herein, the facts in relation to the
16 dispute and all claims released by the terms of this Stipulation may turn out to be
17 other than or different from the facts now known by each Party and/or its counsel, or
18 believed by such Party or counsel to be true, and each Party therefore expressly
19 assumes the risk of the existence of different or presently unknown facts, and agrees
20 that this Stipulation shall be in all respects effective and binding despite such
21 difference.

22 **71. Public Comments Regarding the Litigation or the Settlement.**
23 Plaintiff and Class Counsel agree that, prior to the filing of the Motion for
24 Preliminary Approval of the Settlement, they shall keep the fact and the terms of the
25 Settlement confidential. The Parties further agree as follows:

26 (a) Class Counsel shall not take any action to affirmatively report the
27 Settlement to any publication, whether print, electronic, or otherwise. Plaintiff and
28 Pacer, and their respective counsel, agree that they shall not discuss with or present

1 to the media the terms of this Stipulation, the fact of the Settlement embodied in this
2 Stipulation, the disposition of the Action, the Action, and all matters relating to the
3 litigation of the Action, including discovery proceedings therein, and evidence
4 obtained during the course of the Action. If contacted by the press or media, Class
5 Counsel may only state that the case has been resolved and may refer the media to
6 the Court file or to the Settlement Administrator;

7 (b) Class Counsel shall not publish information regarding the Settlement
8 on their firm's website;

9 (c) If contacted by any Settlement Class Members or their counsel about
10 the Settlement, including counsel for potential objectors to the Settlement, Class
11 Counsel may discuss with such putative Class Members or their counsel the terms of
12 the Settlement, including reasons why the Settlement is fair, reasonable, and
13 adequate and why it should be approved at the Final Approval and Fairness Hearing,
14 and the negotiations leading up to the Settlement;

15 (d) Class Counsel may also discuss any aspect of the Action with any
16 expert(s) who may provide opinions in the Action on the reasonableness of the
17 attorney fees they seek;

18 (e) Before the Class Notice has been mailed, to the extent they have not
19 done so to date, Plaintiff shall refrain from discussing the terms or the fact of the
20 Settlement with third parties other than (i) his immediate family members and (ii)
21 his accountants or lawyers as necessary for tax purposes, except that the Plaintiff
22 may respond to any inquiries that he receives from other putative Settlement Class
23 Members concerning the Settlement; and

24 (f) All necessary disclosures may be made on the parties' financial
25 statements; to their accountants and auditors; in public filings; to government
26 regulatory agencies; to their banks; and to any local, state, or federal taxing
27 authority; or as otherwise required by law.

28 **72. Governing Law.** This Stipulation is intended to and shall be governed

1 by the laws of the State of California, without regard to conflict of law principles, in
2 all respects, including execution, interpretation, performance, and enforcement.

3 **73. Attorney Fees, Costs, and Expenses.** Except as otherwise specifically
4 provided for herein, each Party shall bear his or its own attorney fee, costs, and
5 expenses, taxable or otherwise, incurred by them in or arising out of the Action and
6 shall not seek reimbursement thereof from any other Party to this Stipulation.

7 **74. Notices.** Unless otherwise specifically provided herein, all notices,
8 demands or other communications given hereunder shall be in writing and shall be
9 sufficiently given if delivered to the Party or their counsel by registered or certified
10 mail, return receipt requested, e-mail, facsimile or overnight delivery addressed as
11 follows:

12 To the Settlement Class:

13 Brian S. Kabateck, Esq.
14 Richard L. Kellner, Esq.
15 Joshua H. Haffner, Esq.
16 Kabateck Brown Kellner
644 S. Figueroa Street
Los Angeles, CA 90017

17 To Pacer:

18 Christopher C. McNatt, Jr., Esq.
19 Scopelitis, Garvin, Light, Hanson & Feary, LLP
2 North Lake Avenue, Suite 460
Pasadena, CA 91101

20 James H. Hanson, Esq.
21 Angela S. Cash, Esq.
22 Ryan S. Wright, Esq.
23 Scopelitis, Garvin, Light, Hanson & Feary. P.C.
10 West Market Street, Suite 1500
Indianapolis, Indiana 46204

24 **75. Construction.** The Parties hereto agree that the terms and conditions
25 of this Stipulation are the result of lengthy, intensive arms' length negotiations
26 between the Parties and that this Stipulation shall not be construed in favor of or
27 against any Party by reason of the extent to which any Party or his or its counsel
28 participated in the drafting of this Stipulation.

1 **76. Captions and Interpretations.** Paragraph titles or captions contained
2 herein are inserted as a matter of convenience and for reference and in no way
3 define, limit, extend, or describe the scope of this Stipulation or any provision
4 hereof. Each term of this Stipulation is contractual and not merely a recital.

5 **77. Modification.** This Stipulation may not be changed, altered, or
6 modified, except in writing and signed by the Parties hereto and approved by the
7 Court. This Stipulation may not be discharged except by performance in accordance
8 with its terms or by a writing signed by all of the Parties hereto.

9 **78. Integration Clause.** This Stipulation contains the entire agreement
10 between the Parties relating to the Settlement and transaction contemplated hereby,
11 and all prior or contemporaneous agreements, understandings, representations, and
12 statements, whether oral or written and whether by a Party or such Party's legal
13 counsel, are merged herein. No rights hereunder may be waived except in writing.

14 **79. Binding Effect.** This Stipulation shall be binding upon and inure to the
15 benefit of Plaintiff, the members of the Settlement Class, and their heirs, trustees,
16 executors, administrators, successors and assigns and to the benefit of Pacer and the
17 Released Parties, and their present and former, parent companies, subsidiaries,
18 divisions, affiliates, related companies, joint ventures, and each of their respective
19 present and former officers, directors, shareholders, agents, employees, insurers,
20 attorneys, accountants, auditors, advisors, representatives, consultants, pension and
21 welfare benefit plans, plan fiduciaries, administrators, trustees, general and limited
22 partners, predecessors, successors and assigns.

23 **80. Signatures of All Settlement Class Members Unnecessary to be**
24 **Binding.** It is agreed that, because the members of the Settlement Class are
25 numerous, it is impossible or impractical to have each Settlement Class Member
26 execute this Stipulation. The Notice will advise all Settlement Class Members of
27 the binding nature of the release provided herein and such shall have the same force
28 and effect as if each Settlement Class Member executed this Stipulation. It is agreed

1 that for purposes of seeking approval of the Settlement, this Stipulation may be
2 executed on behalf of the Settlement Class by Class Counsel and Plaintiff.

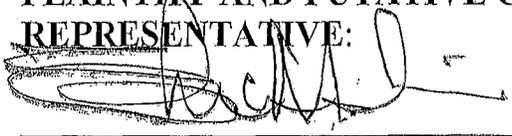
3 **81. Counterparts.** This Stipulation may be executed in counterparts, and
4 when each Party has signed and delivered at least one such counterpart, each
5 counterpart shall be deemed an original, and, when taken together with other signed
6 counterparts, shall constitute one fully-signed Stipulation, which shall be binding
7 upon and effective as to all Parties.

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: ~~February~~ ^{March} 4, 2015

**PLAINTIFF AND PUTATIVE CLASS
REPRESENTATIVE:**



Edwin Molina

Dated: February __, 2015

DEFENDANT:

PACER CARTAGE, INC.

By: _____

Its: _____

1 that for purposes of seeking approval of the Settlement, this Stipulation may be
2 executed on behalf of the Settlement Class by Class Counsel and Plaintiff.

3 **81. Counterparts.** This Stipulation may be executed in counterparts, and
4 when each Party has signed and delivered at least one such counterpart, each
5 counterpart shall be deemed an original, and, when taken together with other signed
6 counterparts, shall constitute one fully-signed Stipulation, which shall be binding
7 upon and effective as to all Parties.

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

11
12 Dated: February ____, 2015

**PLAINTIFF AND PUTATIVE CLASS
REPRESENTATIVE:**

13
14
15 _____
Edwin Molina

March 4

16 Dated: ~~February~~ ____, 2015

DEFENDANT:

17
18 PACER CARTAGE, INC.

19 By: *Robert Z. Stewart Jr*

20 Its: *Vice President Assistant General*
21 *Counsel*

22
23
24
25
26
27
28

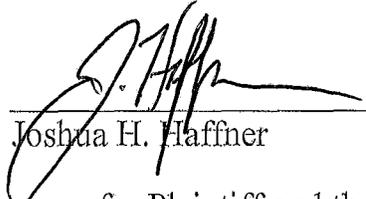
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM AND CONTENT

Dated: ~~February~~ ^{March} 9, 2015

CLASS COUNSEL:

KABATECK BROWN KELLNER LLP

By: 
Joshua H. Haffner

Attorneys for Plaintiff and the Settlement Class

Dated: February ____, 2015

DEFENDANT'S COUNSEL:

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

By: _____
James H. Hanson

Attorneys for Defendant,
Pacer Cartage, Inc.

4830-9621-0722, v. 4

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

APPROVED AS TO FORM AND CONTENT

Dated: February __, 2015

CLASS COUNSEL:

KABATECK BROWN KELLNER LLP

By: _____
Joshua H. Haffner

Attorneys for Plaintiff and the Settlement Class

Dated: ^{March}~~February~~ 6, 2015

DEFENDANT'S COUNSEL:

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

By:  _____
James H. Hanson

Attorneys for Defendant,
Pacer Cartage, Inc.

4830-9621-0722, v. 4