

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN MATUTE, Individually and
on behalf of all similarly situated
individuals,

Plaintiff,

vs.

**PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES**, A Pennsylvania
LLC; **BEST BUY CO., INC.**, A Minnesota
Corporation, et al.,
Defendants.

CASE NO. 22-cv-00587-YGR

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND SETTING DEADLINES
FOR NOTICE, OBJECTION, EXCLUSION, AND
FINAL FAIRNESS HEARING**

Dkt. No. 37

On August 15, 2023, the Court held a hearing on the unopposed motion of plaintiff Christian Matute's motion for preliminary approval of the parties' proposed settlement; provisional certification of the Settlement Class; appointment of plaintiff's counsel as Settlement Class Counsel; approval of the proposed Notice Plan; approval of the proposed settlement administrator; and to set a date for the hearing on final approval of the settlement. (Dkt. No. 37.)

The Court preliminarily granted the motion at the hearing and now issues this Order addressing its reasoning in more detail. As noted at the hearing, the Court approves the Settlement Agreement and notice with the modifications agreed to by the parties and included as Exhibits A and B of this Order.

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I. BACKGROUND

Plaintiff filed this class action lawsuit to address his claim that he and the class he seeks to represent are employees of Pilot Air Freight LLC d/b/a Pilot Freight Services (“Pilot”) and Best Buy Co., Inc. (“Best Buy”) (collectively “Defendants”), and the Defendants consistently failed to pay plaintiff and contract carriers, truck drivers, and helpers for all hours worked, including overtime, and that they were not provided meal and rest periods.

Plaintiff’s claims stem from the allegation that he and class members were employees improperly classified by defendants as independent contractors. Plaintiff alleges claims for failure to pay minimum wage, failure to pay overtime, failure to reimburse employment expenses, unlawful deduction from wages, failure to provide meal periods, failure to allow rest periods, failure to furnish accurate wage statements, waiting time penalties, and unfair competition, as well as a PAGA action. (*See* Dkt. No. 1-1, Complaint (“Comp.”).)

Defendants removed this case from Alameda County Superior Court on January 28, 2022. (Dkt. No. 1.) Parties then attended an early mediation before Francis J. Ortman III. (Dkt. No. 37-1, Kizirian Decl., ¶ 12.) In preparation for mediation, defendants disclosed to plaintiff substantial documentation and data. Plaintiff also consulted with an expert in advance of mediation to determine the amount of damages potentially available to putative class members based on the scope of wage and hour violations, assuming plaintiff successfully established misclassification. Counsel also communicated with plaintiff and various class members. Parties reached a settlement in principle through mediation December 2, 2022, but continued to work out details through May 2023. (*Id.* at ¶ 14.)

II. CONDITIONAL CERTIFICATION OF THE CLASS

The Settlement Agreement, attached hereto as **Exhibit A**, defines the class as:

(a) all individuals who provided services for Pilot and Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California and (b) all entities owned and controlled by contract carriers which contracted directly with Pilot and provided delivery services for Best Buy (as those entities are defined below) from March 28, 2017 through the date of preliminary approval of the Settlement. However, the Settlement Class shall exclude all

individuals and entities who provided delivery services for Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

Settlement Agreement sec. II.C. This class excludes:

... all individuals and entities who provided delivery services for Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

*Id.*¹

The numerosity requirement of Rule 23(a)(1) is met as there are approximately 567 class members.

Rule 23(a)(2) commonality requires “questions of fact or law common to the class,” though all questions of fact and law need not be in common. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Common factual and legal issues include whether putative class members are employees that were improperly classified independent contractors. That issue, alone, satisfies the commonality requirement of Rule 23(a)(2).

Rule 23(a)(3) requires that plaintiff shows that the claims or defenses of the representative party is typical of the claims or defenses of the class. Plaintiff’s and members of the Settlement Class’s claims all stem from the same alleged conduct, making plaintiff’s claims typical of class members.

With respect to Rule 23(a)(4), the Court finds that the representative party and his counsel have fairly and adequately represented the interests of the Settlement Class. No conflicts of interest appear as between plaintiff and the members of the Settlement Class. Plaintiff’s counsel are well versed in this area of the law and have demonstrated that they are qualified and have experience with prosecuting class actions of this kind and therefore are therefore qualified to act as Class Counsel.

¹ This class definition is essentially the same as that in the complaint, but for the addition of the *Henriquez* exception.

1 The Settlement Class further satisfies Rule 23(b)(3) in that common issues predominate,
2 and a class action is superior to other available methods for fairly and efficiently adjudicating the
3 claims here.

4 Based on the foregoing, the proposed class is conditionally certified pursuant to Rule
5 23(c).

6 **III. APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL**

7 Plaintiff Matute is appointed the Class Representative. Michael H. Boyamian and Armand
8 R. Kizirian of Boyamian Law, Inc. are appointed as Class Counsel.

9 Class Counsel conducted significant research and investigation in prosecution of this
10 action. With respect to the named plaintiff, he has actively furthered the interests of the class by
11 coming forward with this case despite his concern about retaliation and by providing necessary
12 information to Counsel. Named plaintiff appears to have no conflict of interest with the Settlement
13 Class and have suffered the same alleged injury as all Settlement Class members.

14 **IV. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

15 In summary, the settlement provides \$650,000 to the settlement fund to be allocated based
16 upon the number of workweeks that Settlement Class Members worked in the statutory period.
17 Settlement Agreement, ¶ IV(J). After accounting for awards and fees and the LWDA portion of the
18 PAGA allocation (\$24,375), the net fund will be roughly \$368,575.

19 The Settlement Agreement appears to have been the product of arm's length and informed
20 negotiations. The relief provided for the Settlement Class appears to be adequate, taking into
21 account: (i) the costs and risks associated with trial and appeal; (ii) the effectiveness of any
22 proposed method of distributing relief to the class, including the method of processing class-
23 member claims; (iii) the terms of any proposed award of attorney's fees, including timing of
24 payment; and (iv) any agreements required to be identified under Rule 23(e)(3) (in this case,
25 none).

26 Moreover, the Settlement Agreement appears to treat class members equitably relative to
27 each other. (*See, infra*, Plan of Allocation.)
28

Accordingly, the Settlement Agreement is granted preliminary approval pursuant to Rule 23(e)(2). Based upon the information before the Court, the Settlement Agreement falls within the range of possible approval as fair, adequate and reasonable, and there is a sufficient basis for notifying the class and for setting a Fairness and Final Approval Hearing.

4. Plan of Allocation

As stated, the settlement shall be allocated based upon the number of workweeks that Settlement Class Members worked in the statutory period. To give a general sense of recovery, if the funds are divided equally per class member, each class member would receive approximately \$650.

Counsel represents that while there are differences in damages between Contract Carriers on the one hand, and Drivers and Helpers on the other, Class Counsel believes unified allocation plan is fair and reasonable because while the damages are higher for the Contract Carriers, liability and class certification would be more difficult to establish on behalf of the Contract Carriers. (Kizirian Decl., ¶ 34.) The Court finds this reasonable.

5. Notice Plan

The parties' proposed notice plan appears to be constitutionally sound in that plaintiff has made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Settlement Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the Settlement Agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law.

As noted at the hearing, the Court requested changes, and now approves the revised form of the proposed Class Long Notice attached as **Exhibit B** to this Order. The notice is sufficient to inform Settlement Class members of the terms of the Settlement Agreement, their rights under the Settlement Agreement, their rights to object to or comment on the Settlement Agreement, their right to receive a payment or opt out of the Settlement Agreement, the process for doing so, and the date and location of the Fairness and Final Approval hearing and is therefore **APPROVED**.

As discussed at the hearing, notice shall be sent by **October 31, 2023**.

6. Settlement Administrator

ILYM is appointed to act as the Settlement Administrator, pursuant to the terms set forth in the Settlement Agreement.

The Settlement Administrator shall distribute the Class Notice according to the notice plan described in the Settlement Agreement and substantially in the form approved herein, no later than **30 days** from entry of this order (“Notice Date”). Proof of distribution of the Class Notice shall be filed by the parties in conjunction with the motion for final approval.

Defendant is directed to provide to the Settlement Administrator the Settlement Class members’ contact data as specified by the Settlement Agreement.

7. Opt-Outs

The opt-out process is clear and reasonable. Settlement Class Members who wish to exclude themselves from the class settlement may do so by submitting an opt-out to the Settlement Administrator. In order to opt-out, the class member must provide their name, address, telephone number, and the last four digits of their Social Security Number. (Settlement Agreement, ¶ IV(E).) Any Settlement Class member who does not request exclusion from the settlement class as provided above shall be bound by the terms and provisions of the Settlement Agreement upon its final approval, including but not limited to the releases, waivers, and covenants described in the Settlement Agreement.

8. Objections

Settlement Class Members are able to object to the settlement by informing the Settlement Administrator or filing directly with the Court. (Settlement Agreement, ¶ IV(H)(1); Notice of Proposed Class Action Settlement, Section 9.) The Notice of Proposed Class Action Settlement requests that the Settlement Class Member state the basis of their objection, include their full contact information, and provides to the Settlement Class Member the address for the clerk’s office for submitting objections. (*Id*)

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9. Attorneys' Fees and Class Representative Awards

Plaintiff and his counsel shall file their motion for attorneys' fees and for Class Representative awards at least **30 days** before the close of the objection and opt-out periods. Counsel is reminded that the Court does not typically award 33% of the gross settlement fund as fees and that any request for the same will need to be accompanied by detailed time records. Each Settlement Class member shall have the right to object to the motion for attorneys' fees and Class Representative awards by filing a written objection with the Court. Plaintiff shall file a reply brief responding to any timely objection within **14 days** of the objection and opt-out deadlines.

10. Fairness and Final Approval Hearing

All briefs, memoranda and papers in support of final approval of the final settlement shall be filed no later than **14 days** after the approval deadline.

The Court will conduct a Fairness and Final Approval Hearing on **JANUARY 23, 2024 AT 2:00 PM** to determine whether the Settlement Agreement should be granted final approval as fair, reasonable, and adequate as to the Class. The Court will hear all evidence and argument necessary to evaluate the Settlement Agreement and will consider Class Counsel's motion for attorneys' fees and for Class Representative awards.

Class members may appear, by counsel or on their own behalf, to be heard in support of or opposition to the Settlement Agreement and Class Counsel's motion for attorneys' fees and Class Representative awards by filing a Notice of Intention to Appear by the objection deadline.

The Court reserves the right to continue the date of the final approval hearing without further notice to Class members.

11. Post-Distribution Accounting

If final approval is granted, the parties will be required to file a Post-Distribution Accounting in accordance with this District's Procedural Guidance for Class Action Settlements and at a date set by the Court at the time of the final approval hearing. Counsel should prepare accordingly.


V. CONCLUSION

As stated in here, plaintiff's motion is **GRANTED**. Notice to class members shall be sent no later than October 31, 2023. A final approval hearing is scheduled for January 23, 2024 at 2:00 p.m.

This terminates docket number 37.

IT IS SO ORDERED.

Dated: August 18, 2023


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

United States District Court
Northern District of California

EXHIBIT A

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(Additional Counsel Listed on Following Page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN MATUTE, an individual;
Individually and on Behalf of All Similarly
Situated Individuals,

Plaintiff,

v.

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES, a Pennsylvania Limited
Liability Company; BEST BUY CO., INC., a
Minnesota Corporation; and DOES 1 through
25, Inclusive,

Defendants.

CASE NO. 4:22-cv-00587-YGR

**STIPULATION OF CLASS ACTION
SETTLEMENT**

Action Filed: November 5, 2021

Honorable Judge Yvonne Gonzalez Rogers

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Attorneys for Defendant Best Buy Co., Inc.

I. INTRODUCTION AND SUMMARY OF SETTLEMENT TERMS

This action was brought by Plaintiff Christian Matute (“Plaintiff”), individually and on behalf of all current and former individuals who performed delivery services for Pilot Air Freight LLC dba Pilot Freight Services and/or DSI Logistics, Inc. (“Pilot”) and Best Buy Co., Inc. (“Best Buy”) (collectively, “Defendants”) as contract carriers, drivers, and/or helpers in the state of California during the Class Period, as defined below. In his First Amended Complaint, Plaintiff alleges causes of action against Defendants for (1) failure to pay minimum wage, (2) failure to pay overtime compensation, (3) reimbursement of employment expenses, (4) unlawful deduction from wages, (5) failure to provide meal periods, (6) failure to authorize and permit rest periods, (7) failure to furnish accurate wage statements, (8) waiting time penalties, (9) unfair competition, and (10) violation of the Private Attorneys’ General Act (Labor Code § 2698 et seq.).

On December 2, 2022, Plaintiff and Defendants participated in mediation before Tripper Ortman. The mediation was a successful, arms-length negotiation, and resulted in the parties agreeing to resolve all claims through this Settlement.

Under the terms of the Settlement and after final approval and entry of judgment, Pilot will pay an all-inclusive gross settlement amount of six hundred and fifty thousand dollars (\$650,000) (“Gross Settlement Amount”). The Settlement will be administered by a third-party settlement administrator with experience administering class action settlements of this type. Until distribution, the Gross Settlement Amount will be held in a Qualified Settlement Fund established by the Settlement Administrator. Settlement Group Members (as defined in Section II) will release all Released Claims (as defined in Section II) unless they opt-out of the Settlement.

II. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings set forth below:

A. “Action” means this putative class and representative action pending in the United States District Court for the Northern District of California titled *Christian Matute v. Pilot Air Freight, LLC, et al.*, Case Number 22-cv-00587-TSH.

B. “Agreement” or “Stipulation” means this Stipulation of Class Action Settlement.

1 C. "Settlement Class" means (a) all individuals who provided services for Pilot and Best
2 Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of
3 California and (b) all entities owned and controlled by contract carriers which contracted directly with
4 Pilot and provided delivery services for Best Buy (as those entities are defined below) from March 28,
5 2017 through the date of preliminary approval of the Settlement. However, the Settlement Class shall
6 exclude all individuals and entities who provided delivery services for Best Buy (as those entities are
7 defined below) as contract carriers, drivers and/or helpers in the State of California exclusively prior
8 to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez*
9 *v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

10 D. "Settlement Class Counsel" means Michael H. Boyamian and Armand R. Kizirian of
11 Boyamian Law, Inc., 550 North Brand Boulevard, Suite 1500, Glendale, CA 91203, (818) 547-5300.

12 E. "Settlement Class Counsel's Attorneys' Fees" means the amount to be paid to
13 Settlement Class Counsel for attorneys' fees, subject to Court approval at the Final Fairness and
14 Approval Hearing.

15 F. "Settlement Class Counsel's Costs" means the amount to be reimbursed to Settlement
16 Class Counsel for their reasonable costs and expenses incurred in the Action, subject to Court approval
17 at the Final Fairness and Approval Hearing.

18 G. "Settlement Class Data" means information regarding Settlement Class Members that
19 Defendants will in good faith compile from their records and provide to the Settlement Administrator,
20 solely for purposes of the Settlement Administrator's administration of the settlement, and for no other
21 purpose. Settlement Class Data shall include, if known, for each Settlement Class Member: full name,
22 last known address, social security number and/or tax identification number, email address, and the
23 number of Qualifying Workweeks each Settlement Class Member worked during the Settlement Class
24 Period, based on Defendants' records.

25 H. "Settlement Class Member" is a person or entity who is a member of the Settlement
26 Class.

I. “Settlement Class Period” means the period from March 28, 2017 through the date the Court grants preliminary approval of this Settlement.

J. “Complaint” means the First Amended Complaint on file in the Action.

K. “Court” means the United States District Court for the Northern District of California, where the Action is pending.

L. “Counsel for Pilot” means Dhananjay Manthripragada and Thomas Cochrane of Gibson, Dunn & Crutcher, LLP, 333 South Grand Avenue, Los Angeles, California 90071, (213) 229-7000, and Christopher C. McNatt, Andrew J. Butcher, Angela S. Cash, and James A. Eckhart of Scopelitis, Garvin, Light, Hanson & Feary, P.C., 2 North Lake Avenue, Suite 560, Pasadena, California 91101, (626) 795-4700.

M. “Counsel for Best Buy” means Barbara J. Miller, Kimberli A. Williams, Christopher J. Taylor, and Taylor D. Horn of Morgan, Lewis & Bockius LLP, 600 Anton Boulevard, Suite 1800, Costa Mesa, California 92626, (714) 830-0600.

N. “Defendants’ Counsel” means counsel for Pilot and counsel for Best Buy, as defined above.

O. “Pilot” means and includes Defendant Pilot Air Freight LLC dba Pilot Freight Services, and its parents, owners, predecessors, successors, assigns, subsidiaries, and affiliates (including but not limited to DSI Logistics, Inc.), and each of its and their past, present, and future officers, directors, trustees, agents, and/or employees.

P. “Best Buy” means and includes Defendant Best Buy Co., Inc. and its parents, owners, predecessors, successors, assigns, subsidiaries, and affiliates, and each of its and their past, present, and future officers, directors, trustees, agents, and/or employees.

Q. “Effective Date” means the date of entry of a final judgment which grants final approval of this Settlement, if no Objection to Settlement is filed and Plaintiff and Class Counsel waive their rights to appeal the final judgment. If a timely Objection to Settlement is filed, Plaintiff and Class Counsel do not waive their rights to appeal the final judgment, and/or if another party appeals the final judgment, “Effective Date” shall be the later of: (a) the date on which the time for all appeals relating

1 to the Settlement and the Final Approval Order has expired; or (b) if an appeal, review or writ is sought,
2 the date on which the highest reviewing court renders its decision denying any appeal or petition (where
3 the immediately lower court affirmed the final judgment) or affirming the final judgment or the date of
4 final dismissal with prejudice of the last pending appeal from the Final Approval Order.

5 R. "Qualified Settlement Fund" or "QSF" mean a federally insured bank account to be
6 established by the Settlement Administrator into which all payments from Defendants related to this
7 Settlement will be deposited and from which all payments authorized by the Court will be made. The
8 QSF will be established prior to Pilot's deposit of the Gross Settlement Amount.

9 S. "Final Approval Order" means the Order Granting Final Approval of Class Action
10 Settlement and Judgment entered by the Court.

11 T. "Final Fairness and Approval Hearing" means the hearing on Plaintiff's Motion for
12 Final Approval of Class Action Settlement at which the Court will be asked to give final approval to
13 the settlement terms set forth herein and to enter judgment.

14 U. "Gross Settlement Amount" means the all-in, non-reversionary sum of six hundred fifty
15 thousand dollars (\$650,000) which Pilot will pay under this Settlement. The Gross Settlement Amount
16 will be paid on an all-in, common fund, non-reversionary basis, and includes all compensation to be
17 paid by Pilot to effectuate the Settlement.

18 V. "Net Settlement Amount" means the amount remaining from the Gross Settlement
19 Amount after payments of Court-approved Settlement Class Counsel's Attorney's Fees and Settlement
20 Class Counsel's Costs, Service and Release Award to the Representative Plaintiff, Settlement
21 Administration Costs, and payment to the LWDA.

22 W. "Individual Settlement Payment" means the amount payable from the Net Settlement
23 Amount to each Settlement Group Member. The Individual Settlement Payment shall be calculated
24 pursuant to Section IV herein.

25 X. "Notice of Settlement" means the "Notice of Proposed Class Action Settlement and
26 Final Approval Hearing," the form of which is attached hereto as Exhibit A.

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1 Y. “Payment Information Form” means the document included in the Notice of Settlement,
2 the form of which is attached hereto as Exhibit B. The Payment Information Form shall be provided
3 to each Settlement Class Member with the Notice of Settlement and shall inform the Settlement Class
4 Member of the number of Qualifying Workweeks as reflected for the Settlement Class Member in the
5 Settlement Class Data, and shall estimate the Settlement Class Member’s share of the Net Settlement
6 Fund based on the allocation plan set forth in this Stipulation. If signed by a Settlement Group Member
7 and timely and validly submitted to the Settlement Administrator, a Payment Information Form shall
8 confirm that Settlement Group Member’s consent to release FLSA claims through this settlement
9 pursuant to 29 U.S.C. § 216(b), but the Settlement shall effect a full and complete release of all claims
10 under the FLSA based on or reasonably related to the claims asserted in this Action regardless of a
11 Settlement group Member’s submission of a Payment Information Form.

12 Z. “Objection to Settlement” means any timely written objection to this Settlement sent by
13 a Settlement Class Member to the Settlement Administrator as specified herein and in the Notice of
14 Settlement. Any Objection to Settlement must be sent to the Settlement Administrator within the time
15 limitations set forth in this Stipulation.

16 AA. “Parties” means the Plaintiff on behalf of himself and all Settlement Class Members and
17 Defendants.

18 BB. “Preliminary Approval Date” is the date the Court grants preliminary approval of this
19 Settlement.

20 CC. “Qualifying Workweeks” means a week during the Settlement Class Period during
21 which a Settlement Class Member provided services at least one day or more as a helper, driver, or
22 independent hauler for both Pilot and Best Buy (as those entities are defined herein) including any
23 week credited to a Settlement Class Member as set forth below, except for weeks for which the
24 Settlement Class Member previously released claims via the settlement in *Henriquez v. DSI Logistics,*
25 *Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

26 DD. “Released Claims” means any and all claims, debts, liabilities, demands, obligations,
27 guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action, and liabilities of any
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1 nature whatsoever, whenever incurred, including costs, expenses, penalties, and attorneys' fees, known
2 or unknown, suspected or unsuspected, in law or equity, that Plaintiff and/or any Settlement Class
3 Member, had or now has, against Pilot and/or Best Buy (as those entities are defined herein) that arise
4 could have been brought based on ~~from or are reasonably related to~~ the conduct alleged in the First Amended Complaint, including but
5 not limited to any and all claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201,
6 *et seq.*; California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5,
7 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.4, 432.5, 450, 510-
8 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802,
9 2804, 3700 *et seq.*, and 4553 *et seq.*; the Private Attorneys General Act ("PAGA"), California Labor
10 Code section 2698 *et seq.*; California Code of Civil Procedure section 1021.5; California Code of
11 Regulations, title 8, sections 11010 and 11040; Industrial Welfare Commission Wage Orders;
12 California Business and Professions Code sections 17200 *et seq.*; and any other similar municipal code
13 or ordinance, state, federal, or common law, for unpaid wages, minimum wages, regular wages,
14 overtime wages, expense reimbursement, wage statements, payroll recordkeeping, reporting time,
15 improper deduction of wages, failure to provide workers' compensation insurance, meal periods, rest
16 breaks, sick leave, final pay, penalties for timely payment of wages upon discharge, waiting time
17 penalties, PAGA penalties, unfair business practices, all claims arising out of or ~~relating to~~ that could have been brought based on the statutory
18 causes of action described herein, restitution, interest, costs and expenses, attorneys' fees, declaratory
19 relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable
20 remedies, and/or pre- or post-judgment interest at any time during the Settlement Class Period.
21 Released Claims include all such claims regardless of whether they are known or unknown, suspected
22 or unsuspected, and shall run from March 28, 2017 through the Preliminary Approval Date.

23 EE. "Released Parties" means Pilot and Best Buy, as those entities are defined herein.

24 FF. "Representative Plaintiff" means Christian Matute.

25 GG. "Request for Exclusion" or "Opt-Out Request" mean a written and signed request by a
26 Settlement Class Member to be excluded from the Settlement Class that is submitted in accordance
27 with the procedure set forth herein.
28

1 HH. "Service and Release Award" means the payment to be made to the Representative
2 Plaintiff for his service to the Settlement Class and for the broader general release that he is providing
3 to Defendants, which is in addition to whatever payment he otherwise would be entitled to receive as
4 a Settlement Class Member. The Service and Release Award is subject to Court approval.

5 II. "Settlement" means the disposition of the Action and all related claims effectuated by
6 this Agreement.

7 JJ. "Settlement Administration Costs" means the fees and costs incurred or charged by the
8 Settlement Administrator in connection with the execution of its duties under this Agreement including,
9 but not limited to fees and costs associated with: (1) establishing and maintaining the QSF; (2)
10 preparing, issuing and/or monitoring reports, filings, and notices (including the cost of printing and
11 mailing all notices and other documents to the Settlement Class Members) required to be prepared in
12 the course of administering the Settlement; (3) computing the amount of the settlement payments, taxes,
13 and any other payments to be made under this Agreement; (4) handling inquiries about the calculation
14 of individual settlement payments; (5) establishing and operating a settlement payment center website,
15 address, and phone number to receive Settlement Class Members' inquiries about the Settlement; (6)
16 providing a due diligence declaration for submission to the Court prior to the final approval hearing;
17 (7) printing and providing Settlement Class Members and the Plaintiff with 1099 forms as required
18 under this Agreement and applicable law; (8) preparing, issuing, and filing any tax documents or filings
19 required by any governmental taxing authority or other governmental agency; and (9) any other tasks
20 as the Parties mutually agree or the Court orders the Settlement Administrator to perform. Court-
21 approved Settlement Administration Costs will be paid out of the Gross Settlement Amount.

22 KK. "Settlement Administrator" refers to ILYM Group, Inc.

23 LL. "Settlement Group" means all Settlement Class Members who have not timely
24 submitted a valid and complete Request for Exclusion.

25 MM. "Settlement Group Member" is a person who is a member of the Settlement Group.

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1 **III. BACKGROUND**

2 It is agreed by and among the Parties that the Action, including any and all allegations in the
3 First Amended Complaint and any and all claims, damages, remedies sought or causes of action alleged
4 in the First Amended Complaint or that could have been alleged based on the factual allegations of the
5 First Amended Complaint, shall be settled and compromised as between the Settlement Group and
6 Defendants, as well as between the California Labor and Workforce Development Agency in
7 connection with the claims asserted under California Labor Code section 2698 *et seq.*, subject to the
8 terms and conditions set forth in this Stipulation of Class Action Settlement and the approval of the
9 Court.

10 **IV. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

11 **A. Preliminary Approval of Settlement**

12 Once finalized, the Parties shall promptly submit this Stipulation of Settlement to the Court
13 for preliminary approval and determination by the Court as to its fairness, adequacy, and
14 reasonableness. Within 21 days after the execution of this Settlement Stipulation, or by another
15 deadline ordered by the Court, Settlement Class Counsel will file a Motion for Preliminary Approval
16 seeking an order:

- 17 (a) Granting preliminary approval of the proposed settlement as fair,
18 reasonable, and adequate as to Settlement Group Members;
- 19 (b) Granting approval as to form and content of the proposed Notice of
20 Settlement;
- 21 (c) Granting approval of the plan of allocation of the Gross Settlement
22 Fund;
- 23 (d) Directing the mailing of the Notice of Settlement by first-class mail to
24 Settlement Class Members by the Settlement Administrator;
- 25 (e) Conditionally certifying the Settlement Class for settlement purposes
26 only;

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1 (f) Appointing Settlement Class Counsel, Plaintiff as Settlement Class
2 representative, and ILYM Group, Inc. as Settlement Administrator; and

3 (g) Scheduling a Final Fairness Hearing for a determination as to whether
4 the proposed settlement should be finally approved.

5 At the time Settlement Class Counsel files the Motion for Preliminary Approval, Settlement
6 Class Counsel will submit this Settlement Stipulation to the LWDA. *See* Cal. Lab. Code § 2699(1)(2).
7 Defendants will ensure that notice of this Settlement Stipulation is timely submitted to the appropriate
8 Federal and State officials pursuant to 28 U.S.C. § 1715.

9 The Parties have agreed to the certification of the Settlement Class for the sole purposes of
10 effectuating this Settlement. Should the Settlement be terminated for any reason, or should the
11 Settlement not be approved by the Court or the judgment not become final, the fact that the Parties
12 were willing to stipulate to class certification as part of the Settlement will have no bearing on, and will
13 not be admissible in connection with, the issue of whether a class should be certified in a non-settlement
14 context in this Action, and in any of those events, Defendants expressly reserve the right to oppose
15 class certification. Additionally, if the Settlement does not become final, this Agreement and all
16 negotiations, court orders, and proceedings related thereto shall be without prejudice to the rights of all
17 Parties hereto, and evidence relating to the Agreement and all negotiations shall not be admissible in
18 the Action or otherwise. The Parties further agree that if, for any reason, the Settlement is not approved,
19 the certification for purposes of this Settlement will have no force or effect and will be immediately
20 revoked.

21 Should the Court decline to conditionally certify the Settlement Class or to preliminarily
22 approve all material aspects of the Settlement, the Settlement will be null, and void and the Parties will
23 have no further obligations under it.

24 If the Court grants preliminary approval but does not grant final approval of the Settlement,
25 then the preliminary approval order shall be vacated in its entirety, unless the Court orders otherwise.

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1 **B. Cooperation**

2 The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement,
3 including but not limited to taking any reasonably necessary actions to implement the terms of this
4 Agreement. No party, nor any of its attorneys or agents, shall solicit or encourage any Settlement Class
5 Member to opt out of or object to the Settlement.

6 **C. Notice of Settlement**

7 Within sixty (60) days of the Preliminary Approval Date, but subject to the Settlement
8 Administrator providing adequate and contractual assurances with respect to confidentiality and data
9 security, Defendants shall provide the Settlement Administrator with the Settlement Class Data. This
10 information will remain confidential and will not be disclosed to anyone, except as required to
11 applicable taxing authorities, pursuant to Defendants' express written authorization, by order of the
12 Court, or as otherwise provided for in this Agreement. The Settlement Class Data shall be used only
13 for the purpose of administering this Settlement Stipulation.

14 Using the Settlement Class Data, the Settlement Administrator will: (1) confirm and inform
15 the number of Settlement Class Members, (2) finalize and print the Notice of Settlement; (3) check all
16 addresses against the National Change of Address database; and (4) within fourteen (14) calendar days
17 of receiving the Settlement Class Data, send to each Settlement Class Member via First-Class United
18 States mail an English and Spanish version of the Notice of Settlement to the most recent address
19 known for each Settlement Class Member. It will be conclusively presumed that if an envelope so
20 mailed has not been returned within fifteen (15) calendar days of the mailing, the Settlement Class
21 Member received the Notice of Settlement.

22 Any individual who did not receive the Notice of the Settlement seeking to be included in the
23 Settlement shall provide the Settlement Administrator with their full name, date of birth, Social
24 Security number or tax identification number, the name of the contract carrier that the individual
25 worked for (if any), and written proof of their provision of services to Defendants during the Settlement
26 Class Period, with as much detail as feasible, such as dates of work, to assist the Parties with
27 establishing the individual's status as a Settlement Class Member. Upon receipt of the written proof
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1 from such an individual, Pilot will make a good-faith effort to promptly confirm their work dates, and
2 will promptly provide such information to the Settlement Administrator. To the extent necessary to
3 resolve disputes regarding the validation process, the Parties agree to meet and confer in good faith.
4 The Settlement Administrator, advised by the Parties, will determine whether each such individual is
5 to be treated as a Settlement Class Member.

6 **D. Re-Sending Settlement Class Notices**

7 In the event that Defendants' Counsel or Settlement Class Counsel becomes aware of new
8 addresses for any Settlement Class Member, prior to the filing of the motion for final approval, such
9 information must be communicated to the Settlement Administrator. The Settlement Administrator
10 will then re-send a Notice of Settlement to the Settlement Class Member(s) at the new address.

11 For any Notice of Settlement that is returned as undeliverable, the Settlement Administrator
12 will perform a utility database search or other skip trace. The returned Notices of Settlement will be
13 re-mailed to the new addresses obtained for such Settlement Class Members. Such searching and re-
14 mailing will be completed within fifteen (15) days of the date that Notices of Settlement were originally
15 returned as undeliverable. Notwithstanding anything to the contrary in this Stipulation and absent
16 approval from the Parties, through their counsel, any Notice of Settlement that is mailed or re-mailed
17 after the original mailing date will provide for a response deadline that is no later than ten (10) days
18 prior to the Final Fairness and Approval Hearing even if such date is less than 60 days from the date of
19 mailing or re-mailing. It will be conclusively presumed that if an envelope so re-mailed has not been
20 returned within fifteen (15) days of re-mailing, the Settlement Class Member received the Notice of
21 Settlement.

22 **E. Requests for Exclusion (Opt-Outs)**

23 Any Settlement Class Member who wishes to be excluded from the Settlement must notify the
24 Settlement Administrator in writing of his or her desire to be excluded by mailing his or her own written
25 statement to the Settlement Administrator that clearly expresses such desire and is signed by such
26 Settlement Class Member. Any such statement shall include the Settlement Class Member's name
27 (and former names, if any), current address, telephone number, and last four numbers of the Settlement
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1 Class Member's social security number. To be valid, the Request for Exclusion must (1) include a
2 clear statement of intention to be excluded from the settlement; (2) include the full name, address,
3 telephone number, and last four digits of the Social Security Number of the Settlement Class Member
4 requesting exclusion; (3) be signed by the Settlement Class Member; (4) be returned by U.S. Mail to
5 the Settlement Administrator at the specified address; and (5) be postmarked no later than sixty (60)
6 days after the original date of the Settlement Administrator's mailing of the Notice of Settlement or re-
7 mailing for Settlement Class Members whose Notices of Settlement were re-mailed, provided,
8 however, for any Notice of Settlement that is mailed or re-mailed after the original mailing date the
9 deadline to request exclusion will be no later than ten (10) days prior to the Final Fairness and Approval
10 Hearing even if such date is less than 60 days from the date of mailing or re-mailing. Any disputes
11 regarding the timeliness, validity or effectiveness of a Request for Exclusion shall be decided by the
12 Settlement Administrator, with the Parties' input, if appropriate. The date of the postmark on the
13 mailing envelope for any Request for Exclusion shall be the exclusive means used to determine whether
14 the Request for Exclusion has been timely submitted.

15 Any Settlement Class Member who submits a valid and timely request to be excluded from the
16 Settlement shall be barred from participating in this Settlement, shall be barred from objecting to this
17 Settlement, and shall receive no benefit from this Settlement, provided, however, that regardless of
18 whether any Settlement Class Member timely submits a Request for Exclusion from the Settlement, all
19 Settlement Class Members will still be bound by the settlement and release of any PAGA Claims upon
20 Final Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), and shall receive a pro
21 rata portion of the PAGA Payment allocated for Settlement Class Member distribution. For the
22 avoidance of doubt, Requests for Exclusion do not apply to PAGA Claims, and will not be effective to
23 preclude the release of PAGA Claims. In furtherance of the foregoing, any Settlement Class Member
24 who submits a valid and timely request to be excluded from the Settlement shall be deemed to have
25 waived all objections and opposition to the fairness, reasonableness, and adequacy of this Settlement,
26 except as to the settlement's release of PAGA Claims.

27 Any Settlement Class Member who fails to submit a timely, complete, and valid Request for
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1 Exclusion shall be barred from opting out of the Settlement and shall be a Settlement Group Member.
2 It shall be conclusively presumed that, if a Request for Exclusion is not postmarked on or before the
3 expiration of the period to submit a Request for Exclusion, the Settlement Class Member did not make
4 the request in a timely manner. Under no circumstances shall the Settlement Administrator have the
5 authority to extend the deadline for Settlement Class Members to file a Request for Exclusion. The
6 Settlement Administrator shall promptly provide Settlement Class Counsel and Defendants' Counsel
7 with copies of all Requests for Exclusion that it receives.

8 Unless a Settlement Class Member submits a timely, complete, and valid Request for Exclusion,
9 he or she shall be deemed a Settlement Group Member and shall be bound by the terms and conditions
10 of this Agreement. The releases provided for in this Agreement shall conclusively preclude any
11 Settlement Group Member from asserting any of the Released Claims against any of the Released
12 Parties in any judicial, administrative, or arbitral forum. Notwithstanding the submission of a timely
13 request for exclusion from the Settlement, Settlement Class Members will still be bound by the
14 settlement and release of any PAGA Claims upon Final Judgment pursuant to *Arias v. Superior Court*,
15 46 Cal. 4th 969 (2009).

16 **F. Declaration of Compliance**

17 As soon as practicable following the Preliminary Approval Date, and at least twenty-one (21)
18 days before the Final Approval Hearing, the Settlement Administrator shall provide Settlement Class
19 Counsel and Defendants' Counsel with a declaration attesting to completion of the notice process set
20 forth in this Section IV, including the number of notices sent and returned, an explanation of efforts to
21 resend undeliverable notices, and copies of all Requests for Exclusion, which declaration shall be filed
22 with the Court by Settlement Class Counsel.

23 **G. Sufficient Notice**

24 Compliance with the procedures described in this Section IV shall constitute due and sufficient
25 notice to Settlement Class Members of this Settlement and of the Final Fairness and Approval Hearing,
26 shall satisfy the requirements of due process, and nothing else shall be required of the Representative
27 Plaintiff, Settlement Class Counsel, Defendants, Defendants' Counsel, or the Settlement Administrator
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1 to provide notice of the Settlement and the Final Fairness and Approval Hearing.

2 **H. Objections to Settlement**

3 **1. Deadline for Objections**

4 Any Settlement Class Member wishing to object to the approval of this Settlement shall inform
5 the Settlement Administrator in writing of his or her intent to object by following the procedure set
6 forth in the Notice of Settlement within sixty (60) calendar days of mailing. However, for any Notice
7 of Settlement that is mailed or re-mailed after the original mailing date the deadline to object will be
8 no later than ten (10) days prior to the Final Fairness and Approval Hearing even if such date is less
9 than 60 days from the date of mailing or re- mailing. A Settlement Class Member who does not submit
10 a valid and timely Request for Exclusion and who objects to the Settlement will still be considered a
11 Settlement Group Member. A Settlement Class Member who submits both a timely Request for
12 Exclusion and who attempts to object to the Settlement shall be deemed to have opted out of the
13 Settlement.

14 **2. Responses to Objections**

15 Settlement Class Counsel and Defendants' Counsel shall file any written objections from
16 Settlement Class Members submitted to the Settlement Administrator in accordance with this
17 Agreement, and Settlement Class Counsel's and Defendants' Counsel's responses to such objections,
18 at least five (5) court days before the Final Fairness and Approval Hearing.

19 **3. Waiver of Appeal**

20 Any Settlement Class Member who does not timely submit an objection to the Settlement and/or
21 does not comply with any other substantive or procedural obligations imposed by law, waives any and
22 all rights to appeal the Final Approval Order and Judgment, including all rights to any post-judgment
23 proceeding and appellate proceeding such as a motion to vacate the judgment or motion for
24 reconsideration.

25 **4. Defendants' Right to Rescind**

26 Defendants estimate that there are 567 Settlement Class Members, and any dispute regarding
27 any increase of at least 15% from Defendants' estimate shall be brought to Tripper Ortman for
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mediation. Additionally, if five percent (5%) or more of the Settlement Class Members elect not to participate in the Settlement, Defendants may, at their election, rescind the Settlement. In that event, all actions taken in furtherance of the Settlement will be null and void. Defendants must jointly exercise this right of rescission, in a writing to Settlement Class Counsel, within twenty-one (21) calendar days of the date that the Settlement Administrator notifies the Parties of the total number of Settlement Class Members who have opted out of the Settlement. If Defendants exercise this right of rescission, Defendants must pay all reasonable expenses incurred by the Settlement Administrator as of the date of Defendants' notice of rescission.

I. Final Fairness and Approval Hearing

On the date set by the Court, the Final Fairness and Approval Hearing shall be held in order to: (1) determine whether the Court should give this Stipulation final approval; (2) determine whether Settlement Class Counsel's application for attorneys' fees and costs, and request for the Service and Release Payment to the Representative Plaintiff, should be granted; and (3) consider any timely Objections to Settlement, including Settlement Class Counsel's and Defendants' Counsel's responses thereto. At the Final Fairness and Approval Hearing, the Representative Plaintiff, Settlement Class Counsel, and Defendants' Counsel shall ask the Court to give final approval to this Settlement. Upon final approval, the Court shall enter a Final Approval Order (in a form submitted by Settlement Class Counsel and approved by Defendants' Counsel) which has the effect of adjudicating all claims set forth in the Complaint and implementing the release of Released Claims, as set forth in this Agreement. Upon the Court's final approval of this Stipulation of Settlement, the Action shall be dismissed with prejudice.

J. Settlement Payments to Settlement Group Members

Payments under this Settlement Agreement shall be made by the Settlement Administrator as follows, subject to Court approval at the Final Fairness and Approval Hearing.

Each Settlement Group Member shall be entitled to a pro rata share of the Net Settlement Fund based on the number of Qualifying Workweeks the Settlement Group Member worked during the Settlement Class Period to the extent the Qualifying Workweeks can be determined from Defendants'

records. However, Defendants do not have records indicating the number of Qualifying Workweeks worked by helpers employed by contract carriers during the Settlement Class Period. Therefore, each Settlement Group Member for whom the Settlement Class Data shows five (5) or more Qualifying Workweeks shall be credited with the number of Qualifying Workweeks shown in the Settlement Class Data, subject to the process for disputes about Qualifying Workweeks set forth below. Each Settlement Group Member for whom the Settlement Class Data shows less than five (5) Qualifying Workweeks, including each Settlement Group Member for whom Defendants do not have records indicating the number of Qualifying Workweeks, shall be credited with five (5) Qualifying Workweeks, subject to the process for disputes about Qualified Workweeks set forth below.

Using this method of calculating Qualifying Workweeks, the Net Settlement Amount shall be divided among individual Settlement Group Members using the following formula:

$$\text{(Settlement Group Member's Credited Qualifying Workweeks} \div \text{All Settlement Group Members' Credited Qualifying Workweeks)} \times \text{Net Settlement Amount}$$

Any Settlement Group Member for whom the Settlement Administrator was provided a social security number or other tax identification number as part of the Settlement Class Data shall receive an Individual Settlement Payment from the Net Settlement Fund. Any Settlement Group Member for whom a social security number or other tax identification number was not available in the Settlement Class Data must timely submit a Payment Information Form to receive an Individual Settlement Payment from the Net Settlement Fund. A Payment Information Form is timely if it is postmarked within sixty (60) calendar days of the mailing of the Notice of Settlement. However, for any Notice of Settlement that is mailed or re-mailed after the original mailing date the deadline to submit a Payment Information Form will be no later than ten (10) days prior to the Final Fairness and Approval Hearing even if such date is less than 60 days from the date of mailing or re- mailing. A Payment Information Form must be timely mailed to the Settlement Administrator at the address in the Notice of Settlement, or if it is submitted online to the Settlement Administrator, in accordance with the online submission instructions to be provided by the Settlement Administrator. The Payment Information Form must be signed (electronically, if submitted online) under penalty of perjury. To be valid, a Payment

Information Form must be signed without any deletion or amendment to its language confirming the release of FLSA claims and without any deletion or amendment to any other portion. All Settlement Group Members who do not submit a timely Request for Exclusion shall be bound by this Settlement, regardless of whether they submit a timely Payment Information Form.

Settlement Group Members entitled to payment as described above will receive a proportionate share of the Total Settlement Amount. The Settlement Administrator, on Defendants' and Settlement Class Counsel's collective behalf, shall have the authority and obligation to make payments, credits, and disbursements, including payments and credits in the manner set forth herein, to Settlement Group Members calculated in accordance with the methodology set out in this Agreement and orders of the Court.

**1. Inclusion of Qualifying Workweeks and Estimated Settlement Payment
Information in Notice of Settlement**

The Notice of Settlement sent to each Settlement Class Member shall state the amount of the Settlement Class Member's Qualifying Workweeks, as reflected in the Settlement Class Data. Each Notice of Settlement shall also include an estimate of the Settlement Class Member's settlement payment as a member of the Settlement Group, as calculated by the Settlement Administrator. The estimated settlement payment included in the Notice of Settlement will be calculated by assuming that no Settlement Class Members will be excluded from the Settlement Group.

2. Disputes about Qualifying Workweeks

If a Settlement Class Member disagrees with the number of Qualifying Workweeks stated in his or her Notice of Settlement, he or she may dispute that figure by informing the Settlement Administrator of the number of Qualifying Workweeks in dispute by submitting supporting documentation (such as, without limitation, timekeeping records, settlement statements, or pay stubs) prior to the deadline for objecting to the Settlement. Settlement Class Members must notify the Settlement Administrator of any such dispute within sixty (60) days of mailing the Notice of Settlement. However, for any Notice of Settlement that is mailed or re-mailed after the original mailing date, the deadline to dispute information in the Notice of Settlement will be no later than ten (10) days

1 prior to the Final Fairness and Approval Hearing even if such date is less than 60 days from the date of
2 mailing or re-mailing. If there is a dispute, the Settlement Administrator will consult with Settlement
3 Class Counsel and Defendants' Counsel to determine whether an adjustment is warranted. However,
4 the Settlement Administrator shall have the sole discretion to determine the outcome of any such
5 disputes. The Settlement Class Data will be presumed determinative if there is a dispute over
6 Qualifying Workweeks, unless the Settlement Class Member has submitted valid and compelling
7 documentation to support his or her claim to a different number of Qualifying Workweeks than the
8 number shown on the Settlement Class Notice.

9 **3. Payments to Participating Settlement Group Members**

10 Within twenty-one (21) days of Pilot's deposit of the Gross Settlement Amount with the
11 Settlement Administrator, the Settlement Administrator will make settlement payments to Settlement
12 Group Members eligible for payment based on the payment formula set forth herein. However, any
13 portion of the Net Settlement Fund that was allocated to Settlement Group Members for whom there
14 was no social security or other tax identification numbers provided in the Settlement Class Data, and
15 who did not submit valid and timely Payment Information Forms shall be reallocated on a pro rata basis
16 to those Settlement Group Members for whom social security or other tax identification numbers are
17 available, or who submitted valid and timely Payment Information Forms.

18 Settlement Group Member payments paid from the Net Settlement Amount will not be reduced
19 by any employer or employee tax withholdings. For Settlement Group Members for whom a social
20 security number or other tax identification number was either included in the Settlement Class Data or
21 provided by the Settlement Group Member in the Payment Information Form, the Settlement
22 Administrator will issue a Form 1099 for the payments. Each Settlement Group Member will be
23 responsible for any federal, state, and/or local tax obligations and/or consequences that may arise out
24 of the Individual Settlement Payments agreed to in this Agreement.

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**4. Settlement of PAGA Claims and Payment of Settlement Class Members
for PAGA Release**

In consideration for settlement and dismissal of all claims arising under the California Private Attorneys General Act, Cal. Labor Code § 2698, *et seq.* (“PAGA”) by the Settlement Class Members and in exchange for the release of all PAGA claims within the scope of the Released Claims, the Parties agree that, subject to Court approval, \$32,500 shall be allocated from the Gross Settlement Amount as payment for penalties under PAGA (the “PAGA Payment”). Twenty-five percent (\$8,125) of the PAGA Payment shall be distributed to Settlement Class Members (including Settlement Class Members who have opted out of the Settlement Group) as part of the Net Settlement Amount on a pro rata basis. The remaining seventy-five percent (\$24,375) of the PAGA Payment shall be payable to the LWDA, representing the LWDA’s share of PAGA penalties. To the extent the Court does not approve any or all of the PAGA Payment sought by Settlement Class Counsel, any amount disallowed by the Court will remain a portion of the Gross Settlement Amount to be distributed in accordance with the terms of this Stipulation.

K. The Settlement Administrator

The Settlement Administrator will perform the duties specified in this Stipulation and any other duties incidental to such obligations. The Settlement Administrator’s duties shall include, without limitation: establishing the QSF, preparing, translating and distributing the Notice of Settlement and Payment Information Forms; calculating and directing the disbursement of payments to Settlement Class Members, Settlement Class Counsel, the Settlement Class Representative and the LWDA; handling inquiries about the calculation of individual settlement payments; preparing and filing any tax documents or filings required by any governmental taxing authority or other governmental agency; providing requested status reports to the Parties’ counsel; immediately advising Defendants and Settlement Class Counsel of any Settlement Class Members who submit objections and/or requests for exclusions from the Settlement; providing a due diligence declaration for submission to the Court prior to the final approval hearing; printing and providing Settlement Class Members and Plaintiff with 1099 forms as required under this Agreement and applicable law; arranging for and remitting funds from

any uncashed settlement payment to the designated recipient, as determined by the Court; and for such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall maintain commercially reasonable procedures for securely handling Settlement Class Data, and shall accept responsibility for and maintain insurance in case of errors in the administration of the Settlement.

The Settlement Administrator shall establish a settlement payment center address, telephone number, facsimile number, and email address to receive Settlement Class Members' inquiries about the Notice of Settlement and Payment Information Form, requests to be excluded from the Settlement and settlement payments.

In addition, the Settlement Administrator shall establish a static website and post this stipulation, the court-approved Notice, any preliminary approval order, and the Final Approval Order and Judgment.

The Parties confirm, and Settlement Class Counsel and Defendants' Counsel confirm that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

L. Time for Payment by Pilot

Within thirty (30) days after the Effective Date, Pilot shall provide the Gross Settlement Amount to the Settlement Administrator, which the Settlement Administrator shall place in a Qualified Settlement Fund.

M. Payments to Settlement Class Counsel and the Representative Plaintiff

Within twenty-one (21) days of Pilot's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator shall make payments from the Qualified Settlement Fund to: (1) Settlement Class Counsel, both the Settlement Class Counsel's Attorneys' Fees and Settlement Class Counsel's Costs, awarded to Settlement Class Counsel by the Court; and (2) Plaintiff Christian Matute, the Service and Release Award approved by the Court. These payments will be reported on an IRS Form 1099.

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N. Payments to the California Labor and Workforce Development Agency

Within twenty-one (21) days of Pilot's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will make the payment to the LWDA of \$24,375, or such other amount as approved by the Court.

O. Un-negotiated Settlement Payment Checks

If any Settlement Group Member's settlement payment check cannot be sent or otherwise has not been negotiated sixty (60) days after disbursement, the Settlement Administrator shall attempt to contact each Settlement Group Member to advise them to cash their checks, and to offer to replace any checks reported as either lost or stolen. In attempting to contact such persons, the Settlement Administrator will send notices by mail to the individuals' last known addresses (as provided by Defendants) after first checking those addresses against the NCOA database and utility database.

If a Settlement Group Member's check is not cashed within 180 days, the check will be void and a stop payment order may be placed on the check. In such event, the Settlement nevertheless will be binding upon the Settlement Group Member. The funds represented by all uncashed settlement checks will be transmitted by the Settlement Administrator to the California State Controller's Office Unclaimed Property Fund.

P. Settlement Class Counsel Attorneys' Fees and Costs

Settlement Class Counsel may move the Court for an order awarding attorneys' fees expressed as a percentage of the Gross Settlement Fund, and for reimbursement of costs and expenses incurred in the case. Any Settlement Class Counsel's Attorneys' Fees and Settlement Class Counsel's Costs awarded by the Court shall be paid from the Gross Settlement Amount.

To the extent the Court does not approve any or the entire amount Settlement Class Counsel seeks in Attorneys' Fees or Costs, such amounts shall remain part of the Gross Settlement Amount and distributed in accordance with the provisions of this Stipulation. If the Court approves a lesser amount for Settlement Class Counsel's Attorney's Fees or Settlement Class Counsel's Costs than those sought by Settlement Class Counsel, any amount disallowed by the Court shall be reallocated to the Settlement Group Members and the Parties agree that the settlement shall remain binding with such

1 modification(s) and its terms will otherwise be unchanged.

2 Upon the payment of the Court-approved amount of Settlement Class Counsel's Attorneys'
3 Fees and Settlement Class Counsel's Costs, and except as otherwise provided by this Stipulation,
4 Settlement Class Counsel waives any claim to costs and attorneys' fees and expenses against
5 Defendants arising from or related to the Action, including but not limited to claims based on the
6 California Labor Code or any other statute or law. Provided, however, nothing in this Agreement shall
7 prevent Settlement Class Counsel from seeking additional fees for enforcing the terms of this
8 Stipulation and investigating and recovering amounts owed under this Agreement.

9 **Q. Services and Release Award to Representative Plaintiff**

10 Plaintiff may move the Court for a Representative Plaintiff's Service and Release Award not to
11 exceed \$10,000. Any Representative Plaintiff's Service and Release Award awarded by the Court shall
12 be paid from the Gross Settlement Amount.

13 The Representative Plaintiff will be responsible for any federal, state, and/or local tax
14 obligations and/or consequences that may arise out of any Representative Plaintiff's Service and
15 Release Award. To the extent the Court does not approve any or all of the amount of the Service and
16 Release Award sought by Settlement Class Counsel, any amount disallowed by the Court will remain
17 a portion of the Gross Settlement Amount and be distributed in accordance with the terms of this
18 Stipulation and the Parties agree that the Settlement shall remain in binding with such modification(s)
19 and its terms will otherwise be unchanged.

20 **V. LIMITATIONS ON USE OF THIS SETTLEMENT**

21 **A. No Admission of Liability**

22 Neither the acceptance nor the performance by Defendants of the terms of this Stipulation of
23 Settlement, nor any of the related negotiations or proceedings, nor any documents filed in support of
24 the Settlement shall constitute, or be offered, received, claimed, construed, or deemed as, an admission,
25 finding, or evidence of: (i) any wrongdoing by any Defendant, (ii) any violation of any statute or law
26 by any Defendant, (iii) any liability on the claims or allegations in the Action or any other proceeding,
27 or (iv) the propriety of certifying a litigation class in the Action or any other proceeding, and shall not
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1 be used for any purpose whatsoever in any legal proceeding other than a proceeding to enforce the
2 terms of the Settlement.

3 **B. Nullification**

4 If the Court for any reason does not finally approve this Settlement, this Stipulation shall be
5 null and void and all Parties to this Settlement shall stand in the same position, without prejudice, as if
6 the Settlement had been neither entered into nor filed with the Court.

7 Invalidation of any material portion of this Stipulation shall invalidate this Settlement in its
8 entirety unless the Parties shall agree in writing that the remaining provisions shall remain in full force
9 and effect.

10 **VI. RELEASE BY THE SETTLEMENT GROUP MEMBERS**

11 It is the desire of the Representative Plaintiff, Settlement Group Members, and Defendants to
12 fully, finally, and forever settle, compromise, and discharge the Released Claims. Upon entry of the
13 Final Approval Order, all Settlement Group Members, on behalf of themselves, and each of their heirs,
14 representatives, successors, assigns, and attorneys, fully releases and forever discharges the Released
15 Parties from any and all Released Claims that accrued during the Settlement Class Period. This release
16 shall be binding on all Settlement Group Members who have not timely submitted a valid and complete
17 Request for Exclusion, including each of their respective attorneys, agents, spouses, executors,
18 representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of the
19 Released Parties. In addition, the release shall be binding as to all claims arising under PAGA for all
20 Settlement Class Members regardless of whether they opted out of the Settlement Group.

21 **VII. RELEASE BY THE REPRESENTATIVE PLAINTIFF**

22 Upon entry of the Final Approval Order, the Representative Plaintiff fully releases and forever
23 discharges the Released Parties from any and all claims, liabilities, agreements, obligations, losses,
24 damages, costs, expenses, attorneys' fees, injuries, demands, indemnities and causes of action of every
25 kind and nature in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed
26 or undisclosed, contingent or accrued, including but not limited to those arising out of or in any way
27 connected with Plaintiff's relationships with any Released Party, or any other occurrences, actions,
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omissions or claims whatever, known or unknown, suspected or unsuspected, which Plaintiff now owns or holds or has at any time heretofore owned or held as against any of the Released Parties.

The Representative Plaintiff hereby agrees that, notwithstanding § 1542 of the California Civil Code, all claims that the Representative Plaintiff may have, known or unknown, suspected or unsuspected, are hereby released. Section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

The Representative Plaintiff expressly waives the provisions of Section 1542 with full knowledge and with the specific intent to release all known or unknown, suspected or unsuspected, claims arising on or before the Effective Date of the Settlement, and therefore specifically waives the provisions of any statute, rule, decision, or other source of law of the United States or of any state of the United States or any subdivision of a state which prevents release of unknown claims.

VIII. REPRESENTATIONS OF SETTLEMENT CLASS COUNSEL

Settlement Class Counsel affirm that, other than Christian Matute, they do not represent any other workers asserting claims against Defendants as to the Released Claims. Settlement Class Counsel warrant that they have not been retained by and do not otherwise represent any other individual or entity who has notified Settlement Class Counsel of potential claims against Defendants as to the Released Claims.

IX. MISCELLANEOUS PROVISIONS

A. Amendments

This Stipulation of Settlement may only be modified or changed by a writing signed by the Parties or by their counsel.

B. Integrated Agreement

After this Stipulation is signed and delivered by all Parties to the Action and their counsel, this Stipulation and its exhibits will constitute the entire agreement between the Parties to the Action

1 relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants,
2 or inducements have been made to any Party concerning this Stipulation or its exhibits other than the
3 representations, warranties, covenants, and inducements expressly stated in this Stipulation and its
4 exhibits.

5 **C. No Inducements**

6 Plaintiff and Defendants acknowledge that they are entering into this Agreement as a free and
7 voluntary act without duress or undue pressure or influence of any kind or nature whatsoever and that
8 neither Plaintiff nor Defendants have relied on any promises, representations, or warranties regarding
9 the subject matter hereof other than as set forth in this Stipulation.

10 **D. No Prior Assignment**

11 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
12 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity
13 any portion of any liability, claim, demand, action, cause of action, or rights herein released and
14 discharged except as set forth herein.

15 **E. No Retaliation or Advice**

16 Defendants agree not to retaliate against any Settlement Class Member, and Defendants will
17 not induce or offer any advice to any Settlement Class Member to opt out of, or object to, the
18 Settlement.

19 **F. Attorneys' Fees**

20 To the extent that any Party institutes any legal action, arbitration, or other proceeding to
21 enforce the terms of the Settlement, the prevailing Party will be entitled to recover their reasonable
22 attorneys' fees and costs from the other Party or Parties.

23 **G. Applicable Law**

24 All terms and conditions of this Stipulation and its exhibits will be governed by and interpreted
25 according to the laws of the State of California, without giving effect to any conflict of law principles
26 or choice of law principles.

27 ///

1 **H. Entry of Judgment Pursuant to Terms of Settlement**

2 The Parties agree that upon the Settlement of this case, the Court may enter final judgment
3 pursuant to the terms of this Settlement and the Court will retain jurisdiction over the Parties to enforce
4 the Settlement until performance in full of the terms of the Settlement.

5 **I. Continuing Jurisdiction of the Court**

6 The Parties agree that the Court shall retain jurisdiction over the Parties, and over this
7 Stipulation of Settlement, in order to: (i) monitor and enforce compliance with this Settlement
8 Stipulation, Final Approval and/or any related order of this Court; and/or (ii) resolve any disputes over
9 this Settlement Stipulation or the administration of the benefits of this Settlement.

10 **J. Notices**

11 All notices, requests, demands and other communications required or permitted to be given
12 pursuant to this Agreement shall be in writing, and shall be delivered personally or by first class mail
13 to the undersigned persons at their respective addresses as set forth below:

14 SETTLEMENT CLASS COUNSEL:

15 Michael H. Boyamian
16 Armand R. Kizirian
17 BOYAMIAN LAW, INC.
18 550 North Brand Boulevard, Suite 1500
19 Glendale, CA 91203
20 Phone: 818.547.5300

21 COUNSEL FOR DEFENDANT PILOT:

22 Dhananjay S. Manthripragada
23 GIBSON, DUNN & CRUTCHER LLP
24 333 South Grand Avenue
25 Los Angeles, CA 90071
26 Phone: 213.229.7000

27 COUNSEL FOR DEFENDANT BEST BUY:

28 Barbara J. Miller
29 MORGAN, LEWIS & BOCKIUS LLP
30 600 Anton Blvd., Suite 1800
31 Costa Mesa, CA 92626
32 Phone: 714.830.0600

33 ///

1 **K. Binding on Successors**

2 This Agreement shall be binding and shall inure to the benefit of the Parties to the Action and
3 their respective successors, assigns, executors, administrators, heirs, and legal representatives.

4 **L. Counterparts**

5 This Stipulation, and any amendments hereto, may be executed in any number of counterparts,
6 each of which when executed and delivered shall be deemed to be an original and all of which taken
7 together shall constitute the same instrument.

8 **M. Warranties and Representations**

9 With respect to themselves, each of the Parties to this Action and or their agent or counsel
10 represents, covenants, and warrants that they have full power and authority to enter into and
11 consummate all transactions contemplated by this Stipulation and have duly authorized the execution,
12 delivery, and performance of this Stipulation.

13 **N. Representation by Counsel**

14 The Parties to this Action acknowledge that they have been represented by counsel throughout
15 all negotiations that preceded the execution of this Stipulation, and that this Stipulation has been
16 executed with the consent and advice of counsel.

17 **O. Parties' Authority**

18 The signatories hereto hereby represent that they are fully authorized to enter into this
19 Stipulation of Settlement and bind the Parties to the terms and conditions of this Settlement.

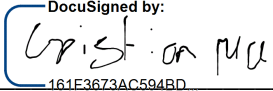
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27 ///

1
2 Dated: May ^{17.00}_____, 2023

CHRISTIAN MATUTE, on behalf of himself
and all others similarly situated

3
4 DocuSigned by:
By: _____
161E3673AC594BD
Christian Matute

6
7 Dated: May __, 2023

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES

10 By: _____

11 Name: _____

12 Position: _____

14
15 Dated: May __, 2023

BEST BUY CO., INC.

17 By: _____

18 Name: _____

19 Position: _____

1
2 Dated: May __, 2023

CHRISTIAN MATUTE, on behalf of himself
and all others similarly situated

3
4
5 By: _____
Christian Matute

6
7 Dated: May 16, 2023

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES

8
9
10 By:  _____

11 Name: Michael Scott

12 Position: U.S Head of Labor & Employment

13
14 Dated: May __, 2023

BEST BUY CO., INC.

15
16
17 By: _____

18 Name: _____

19 Position: _____

1
2 Dated: May __, 2023

CHRISTIAN MATUTE, on behalf of himself
and all others similarly situated

3
4
5 By: _____
Christian Matute

6
7 Dated: May __, 2023

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES

8
9
10 By: _____

11 Name: _____

12 Position: _____

13
14 Dated: May 17, 2023

BEST BUY CO., INC.

15
16
17 By:  _____
0652035734184F0...

18 Name: David Nygaard

19 Position: Senior Vice President

EXHIBIT B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A settlement has been reached with Pilot Air Freight LLC and/or DSI Logistics, Inc. (Pilot) and Best Buy Co., Inc. (Best Buy) in a class action lawsuit brought by individuals who provided delivery services as contract carriers, drivers or helpers. The lawsuit alleges that these individuals were misclassified as independent contractors and that Pilot and Best Buy violated wage and hour laws between March 28, 2017 and (insert date of preliminary approval) (the Settlement Class Period). Pilot and Best Buy deny all allegations and do not admit any wrongdoing.

Contract carriers, drivers or helpers who provided services and haven't previously released their claims (Settlement Class Members) are entitled to an Individual Settlement Payment as *estimated* on your Individual Settlement Payment.

Your legal rights are affected whether you act or don't act. Read this notice carefully. It addresses the options available to you and the deadlines to exercise your rights and options:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
TO RECEIVE PAYMENT, PROVIDE YOUR TAX IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER DEADLINE: (INSERT DATE 60 DAYS AFTER ORIGINAL MAILING OF NOTICE (60-DAY DEADLINE))	Payments from this settlement may be considered taxable income and reportable to taxing authorities. (<i>See</i> Section 8.) Provide your tax identification number (TIN) or social security number (SSN) to the Settlement Administrator. If you do not return a Payment Information Form and the Settlement Administrator does not otherwise have an SSN/TIN on file for you, you WILL NOT receive a settlement payment but you WILL give up any right to sue Pilot and Best Buy for these claims (<i>See</i> Section 17.)
ASK TO BE EXCLUDED FROM THE SETTLEMENT (EXCEPT FOR PAGA CLAIMS) DEADLINE: INSERT 60-DAY DEADLINE	If you exclude yourself from this settlement, you WILL NOT receive payment for any other claims asserted in this lawsuit but you WILL receive a payment pursuant to the Private Attorneys General Act (PAGA) Claims because you may not exclude yourself from a PAGA Claim under California law. Also, you may keep the ability to sue Pilot or Best Buy for claims related to this case. (<i>See</i> Sections 13 & 14.)
OBJECT TO THE SETTLEMENT DEADLINE: INSERT 60-DAY DEADLINE	If you do not exclude yourself from the Settlement, you may still object to it by writing to the Court to explain the basis for your objection. (<i>See</i> Sections 9 & 14.)
SPEAK AT THE HEARING ON _____ AT _____ A.M.	If you object to the settlement, you may ask for permission to speak at the Final Approval Hearing. (<i>See</i> Section 11.)
DO NOTHING (NO DEADLINE)	If you do nothing, you will give up any right to sue Pilot and Best Buy for the claims made in this Lawsuit and, if the Settlement Administrator does NOT otherwise have a SSN/TIN on file for you, you will NOT receive a settlement payment. (<i>See</i> Section 15.)

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1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself from or opt out of the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement if the Court denies your objection.

2. What Is This Case About?

This lawsuit was brought by Plaintiff, Christian Matute, against Pilot and Best Buy in the United States District Court for the Northern District of California under Case No. 4:22-cv-00587 YGR. The lawsuit alleges that Pilot and Best Buy improperly classified contract carriers, drivers and helpers who provided delivery services for Pilot and Best Buy from March 28, 2017 through (insert date of preliminary approval) (the Settlement Class Period) as independent contractors instead of as employees. You may be included in this settlement and entitled to receive an Individual Settlement Payment if you are:

1. An individual who provided services for Pilot and Best Buy as a contract carrier, driver and/or helper in the State of California during the Settlement Class Period; or

2. An entity owned and controlled by a contract carrier which contracted directly with Pilot and provided delivery services for Best Buy during the Settlement Class Period.

The lawsuit also alleges Settlement Class Members were not compensated for all hours worked, were not paid minimum wage, were not provided overtime wages, were not provided meal and rest periods, were not provided timely and compliant itemized wage statements, were not paid all wages due upon termination or resignation, had wages and compensation due wrongly withheld from them, and were subject to unfair business practices. The lawsuit also alleges that these alleged violations give rise to penalties that should be paid to the aggrieved employees and the California Labor and Workforce Development Agency (LWDA) under PAGA. This lawsuit seeks recovery of compensatory damages, restitution, punitive damages, penalties, prejudgment interest, attorneys' fees, disgorgement of profits and costs. The claims in this lawsuit are brought under California law.

Pilot and Best Buy contend that they have strong legal and factual defenses to these claims, but recognize the risks, distractions, and costs associated with litigation. Pilot and Best Buy contend that Settlement Class Members were properly qualified as independent contractors, and that the policies challenged by Plaintiff, including those regarding payment for time worked, meal breaks, and rest breaks, are lawful and have been lawful throughout the relevant time period. Pilot and Best Buy also contend that Plaintiff's claims do not meet the requirements for class certification.

This Settlement is the result of good faith, arm's length negotiations between Plaintiff, Pilot, and Best Buy, through their respective attorneys. The Parties agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Pilot or Best Buy.

The Court has not ruled on the merits of Plaintiff's claims or the defenses raised by Pilot and/or Best Buy.

3. What Are the Terms of the Settlement?

Pilot has agreed to pay **\$650,000.00** to settle this lawsuit (Gross Settlement Amount). Deductions from this amount will be made for attorneys' fees and costs for Settlement Class Counsel, settlement administration costs not to exceed \$_____, and a service award in an amount not to exceed \$10,000.00 to Plaintiff and Class Representative, Christian Matute, for his service to the Settlement Class Members. (See Section 19). After deductions of these amounts, what remains of the Gross Settlement Amount, or the Net Settlement Amount, will be available to pay monetary Individual Settlement Payments to Plaintiff, and Settlement Class Members who do not opt out of the Settlement.

Settlement Class Members are eligible to receive an Individual Settlement Payment from the Net Settlement Amount as explained in Sections 4 & 6. However, the Settlement Class shall exclude all individuals and entities who provided delivery services for Best Buy as contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019) (the *Henriquez Case*).

4. Why did I receive this Notice?

You received this notice because Pilot and/or Best Buy's records show that you or an entity you own and control may have provided services for Pilot and Best Buy as a contract carrier, driver and/or helper in the State of California from March 28, 2017 through (insert date of preliminary approval) and that you did not previously release any and all of your claims through the prior settlement in the *Henriquez v. DSI Logistics, Inc.* case.

5. If I am part of the settlement, what are my options?

If you are a Settlement Class Member, you have several options. You may:

- a) Participate in the Settlement and receive the benefits of the settlement (*See* Section 6);
- b) Object to the settlement by filing and serving an objection by (insert 60-day Deadline) (*See* Sections 9 & 14);
- c) Request to be excluded from the settlement by submitting a request to be excluded from, or opt out of, the settlement by (insert 60-day Deadline) (*See* Sections 13 & 14).

6. How Much Can I Expect to Receive and What do I Need to Do to Receive a Payment?

Any Settlement Class Member who does not opt out of the Settlement will be considered a Settlement Group Member. However, in order to ensure you receive your Individual Settlement Payment, you MUST return a completed Payment Information Form containing your Social Security Number or Tax ID Number on or before (insert 60-day Deadline). However, if you do not return a completed Payment Information Form AND the Settlement Administrator otherwise has your Social Security Number or Tax ID Number on file, you will still receive your Individual Settlement Payment.

Individual Settlement Payments are determined as follows:

- a) Each Settlement Group Member will receive a proportional share of the Net Settlement Amount based upon the number of Qualifying Workweeks shown in Defendants' records for that Settlement Group Member. The Individual Settlement Payment is the amount equal to the Settlement Group Member's Credited Qualifying Workweeks divided by All Settlement Group Members' Credited Qualifying Workweeks multiplied by the Net Settlement Amount.
- b) Qualifying Workweeks means any week between March 28, 2017 and (insert date of preliminary approval) during which a Settlement Group Member provided services as a helper, driver, or contract carrier (also referred to as an independent hauler) for Pilot and Best Buy, to the extent that the Settlement Group Member's Qualifying Workweeks can be determined from Defendants' records. Each Settlement Group Member will be credited with the higher of their actual Qualifying Workweeks as determined from Defendants' records or Five (5) Qualifying Workweeks (Credited Qualifying Workweeks).

- i. Any Credited Qualifying Workweeks for which the Settlement Group Member previously released claims through the settlement in the *Henriquez* case are not considered Credited Qualifying Workweeks.
- ii. **Your Credited Qualifying Workweeks according to Defendants' records and your estimated Individual Settlement Payment are listed on the Payment Information Form at page [redacted] of this Notice.**

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Individual Settlement Payment. If you fail to keep your address current, you may not receive your Individual Settlement Payment, but you will still be bound by the Settlement.

7. Can I dispute my estimated Net Settlement Amount?

Your estimated Net Settlement amount is based on your Credited Qualifying Workweeks as shown on the Payment Information Form. If you do not believe that the Credited Qualifying Workweeks shown is accurate, you may submit supporting documentation showing when you believe you provided delivery services for Pilot and Best Buy (such as, without limitation, timekeeping records, settlement statements or pay stubs) to the Settlement Administrator. Any disputes to the Credited Qualifying Workweeks must be postmarked by (insert 60-day Deadline) and should be mailed to (insert Settlement Administrator Address). The Settlement Administrator will consult with Settlement Class Counsel and Defendants' Counsel regarding all disputes, but no adjustments will be made unless the Settlement Group Member has submitted valid and compelling documentation to support the dispute to the Credited Qualifying Workweeks shown on the Payment Information Form. The Settlement Administrator shall have sole discretion to determine the outcome of any such disputes and shall notify the Settlement Group Member in writing of the outcome.

To do so, send a letter to the Settlement Administrator explaining the basis for your dispute and attach copies of the supporting documentation as described above.

8. How is my Net Settlement Amount reported for tax purposes?

For tax reporting purposes, all Individual Settlement Payments will be reported on an U.S. Internal Revenue Service (IRS) Form 1099. In the event any portion of the Individual Settlement Payment paid to the Settlement Group Members is ultimately construed by the IRS or any other taxing authority to be taxable income from which taxes should have been withheld, the Settlement Group Members shall pay any and all such taxes, interest, and penalties on the amount they receive. None of the parties or attorneys makes any representations concerning the tax consequences of this Settlement or the participation of any Settlement Group Member in it. Settlement Group Members should consult with their own tax advisors concerning the tax consequences of the Settlement based on their Individual Settlement Payment.

9. How do I object to the settlement?

If you do not exclude yourself from the settlement, you can ask the Court to deny approval of the settlement by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments

will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object. To be considered, any objection must be made in writing and be filed with the Court. All written objections must:

- (a) state the factual and/or legal grounds for your objection to the settlement and include any documents that support your objection;
- (b) Include your full name, address, telephone number, email address, and any other identifying information such as the entity you own and control, or other names you may have used when providing delivery services;
- (c) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court, Northern District of California or by mailing them to the Class Action Clerk, United States District Court, Northern District of California, 1301 Clay Street, Suite 400S, Oakland CA 94612; and
- (d) be filed or postmarked on or before (insert 60-day Deadline).

10. Can I still receive a settlement award if I do object to the settlement?

If you object to the settlement but the Court approves the settlement despite your objection, you will receive settlement benefits in the same manner as any other Settlement Group Member.

If the Court agrees with you (or any other) objection and does not approve the settlement, you and other Settlement Group Members will not receive any settlement benefits because the settlement agreement will not become effective.

11. Can I appear at the final approval hearing?

If you do not exclude yourself from the settlement, you can (but do not have to) participate and speak for yourself at the Final Approval Hearing. You can also have your own individual lawyer speak separately for you, but you will have to pay for that lawyer yourself.

If you want to appear, or if you want your own lawyer to participate and speak for you regarding the settlement, you and/or your lawyer must first file an objection to the settlement (as described above in Section 9). You must also include on the front of the objection the statement “I intend to appear at the hearing” and identify any persons you propose to call to testify at the hearing or evidence you intend to introduce.

12. Do I have to participate in the settlement?

You are not required to participate in all aspects of the settlement. If you want to exclude yourself from the settlement of all claims except PAGA Claims, you must take action to get out of the settlement. This is called “excluding yourself” or “opting out.” If you exclude yourself from the settlement, you will not be eligible to receive any compensation under the settlement for any claims except the PAGA Claims; you will not be bound by any judgment or settlement of the case; and you will keep, subject to applicable law, your right to sue Pilot or Best Buy for any claims except PAGA Claims. Even if you exclude yourself, you will still receive a pro rata portion of the

PAGA Payment allocated to be distributed to Settlement Class Members for PAGA Claims, and you will release your rights to pursue PAGA Claims against either Pilot or Best Buy.

13. How can I exclude myself from the settlement?

To exclude yourself from the settlement, you must submit a written and signed statement clearly requesting exclusion from the Settlement Class by (insert 60-day Deadline) to:

Matute v. Pilot Settlement Administrator (insert Settlement Administrator Address).

To be effective, this written request must include your full name, address, telephone number, and last four digits of your Social Security Number, be submitted via First Class U.S. mail, and be postmarked by (insert 60-day Deadline). If you fail to submit a valid and timely request for exclusion in this manner, you will be bound by the settlement and judgment entered by the Court.

14. What is the difference between excluding myself and objecting?

Objecting is telling the Court that you do not like something about the settlement but that you still want to participate in the settlement. You can object to the settlement only if you do not exclude yourself from the settlement.

Excluding yourself from the settlement is telling the Court that you do not want to be part of the settlement. If you exclude yourself from the settlement, you cannot object to the settlement because it no longer affects you.

15. What if I do nothing?

If you do nothing, you will likely NOT receive an Individual Settlement Payment, but you will still be a Settlement Group Member and will be bound by the settlement. In order to receive an Individual Settlement Payment, the Settlement Administrator MUST receive your Social Security Number or Tax Identification Number, which is why it is *extremely important that you submit a completed Payment Information Form if you would like to receive an Individual Settlement Payment*. However, if you do not return a completed Payment Information Form AND the Settlement Administrator otherwise has your Social Security Number or Tax ID Number on file, you will still receive an Individual Settlement Payment.

16. Do I need to hire my own attorney?

You do not need to hire an attorney, but you can if you want to. The Class Representative, you, and the entire Settlement Class are already represented by the attorneys listed below who are known as “Settlement Class Counsel”.

BOYAMIAN LAW, INC.

Michael H. Boyamian, SBN 256107
Armand R. Kizirian, SBN 293992
550 North Brand Boulevard, Suite 1500
Glendale, CA 91203
Phone: 818-547-5300
Fax: 818-547-5678

michael@boyamianlaw.com
armand@boyamianlaw.com

You do not need to pay for their services. They will be paid from the settlement fund. If you decide to hire your own attorney, you will have to pay for your attorney's services yourself.

17. What Claims Am I Releasing?

Upon the date the Settlement becomes effective (Effective Date), all Settlement Class Members who do not opt out of the Settlement release the claims described below (Released Claims) against Pilot and Best Buy and their parents, owners, predecessors, successors, assigns, subsidiaries, and affiliates, and each of their past, present, and future officers, directors, trustees, agents, and/or employees (Released Parties).

The Released Claims include any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action, and liabilities of any nature whatsoever, whenever incurred, including costs, expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiff and/or any Settlement Class Member, had or now has, against the Released Parties that arise from or could have been brought based on the conduct alleged in the First Amended Complaint, including but not limited to any and all claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq.; California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.4, 432.5, 450, 510-512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804, 3700 et seq., and 4553 et seq.; the PAGA, California Labor Code section 2698 et seq.; California Code of Civil Procedure section 1021.5; California Code of Regulations, title 8, sections 11010 and 11040; Industrial Welfare Commission Wage Orders; California Business and Professions Code sections 17200 et seq.; and any other similar municipal code or ordinance, state, federal, or common law, for unpaid wages, minimum wages, regular wages, overtime wages, expense reimbursement, wage statements, payroll recordkeeping, reporting time, improper deduction of wages, failure to provide workers' compensation insurance, meal periods, rest breaks, sick leave, final pay, penalties for timely payment of wages upon discharge, waiting time penalties, PAGA penalties, unfair business practices, all claims arising out of or that could have been brought based on the statutory causes of action described herein, restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest at any time during the Settlement Class Period. Released Claims include all such claims regardless of whether they are known or unknown, suspected or unsuspected, and shall run from March 28, 2017 through (insert date of preliminary approval).

Settlement Class Members understand and agree that they are providing the Released Parties with a full and complete release with respect to the Released Claims.

18. Can Pilot or Best Buy Retaliate Against Me for Participating in this Settlement?

No. Your decision as to whether or not to participate in this Settlement will in no way affect your work or relationship with Pilot or Best Buy. It is unlawful for Pilot or Best Buy to take any adverse action against you as a result of your participation in this Settlement.

19. What will Settlement Class Counsel and the Class Representative get from this settlement?

Settlement Class Counsel have not received compensation for their services in bringing the Lawsuit. They will seek to be paid from the Gross Settlement Amount of \$650,000.00. They will ask the Court for an award of attorneys' fees of up to \$214,500 or 33.33% of the Gross Settlement Amount, and costs not to exceed \$ [REDACTED].

The Class Representative will also request a service award not to exceed \$10,000 for the time and work he put into this Lawsuit.

Settlement Class Counsel will file motions asking the Court to approve these awards. The Court may approve these awards at the Final Approval Hearing.

20. When will the settlement be final?

The United States District Court for the Northern District of California has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on **DATE**, 2023, at [REDACTED] a.m., before the Honorable Yvonne Gonzalez Rogers at the Ronald V. Dellums Federal Building and United States Courthouse, 1301 Clay Street, Oakland, California 94612, Courtroom 1. The Final Approval Hearing may be rescheduled to a later time without further notice to you. You can check the Court's website to see the schedule of upcoming motion hearings at <https://apps.cand.uscourts.gov/CEO/cfd.aspx?7145>.

You may, but do not have to, attend the Final Approval Hearing. At the hearing, the Court will decide whether to approve the settlement, the requested award of attorneys' fees and expenses, the service award for Class Representative for prosecuting this litigation, and the costs of administering the settlement.

After the Court rules on the final approval and either the time to appeal has expired or any appeal filed has been resolved in favor of the settlement, the settlement will become final. Once the settlement is final, Individual Settlement Payments will be sent to Settlement Group Members.

21. What if I don't cash my settlement check?

If you participate in the Settlement, you will have 180 days after the Settlement Administrator mails your Individual Settlement Payment check to cash it. If you do not cash the Individual Settlement Payment check sent to you within 180 days of issuance, it will become void, but you will still be bound by the settlement. If at the conclusion of the 180-day void period, there are any uncashed checks, the Settlement Administrator will send the funds represented by all uncashed settlement checks to the California State Controller's Office Unclaimed Property Fund.

22. What dates should I be aware of?

(insert 60-day Deadline) – Last day to file objections to the settlement (including any request to appear at the Final Approval Hearing).

(insert 60-day Deadline) – Last day to postmark requests for exclusion from the Settlement Class.

(insert 60-day Deadline) - Last day to return Payment Information Form, if required.

(insert 60-day Deadline) - Last day to dispute your Credited Qualifying Workweeks.

If the Settlement Administrator had to re-send this Notice to you after the original date that Notices were mailed, the above deadlines may have been extended. Contact the Settlement Administrator for any questions about whether your deadlines have been extended.

DATE, at **TIME** a.m. (unless otherwise ordered by the Court) – Final Approval Hearing at the Court.

23. Where can I get more information?
--

This Notice is only a summary of the Lawsuit and the settlement. For more detailed information, you may review the Complaint or the Stipulation of Class Action Settlement, available at the Settlement website at [insert web address], or call toll-free at [insert 800#], or access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cacd.uscourts.gov/>.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT OR THE JUDGE FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT. Please direct any questions regarding this Notice and the settlement to the Settlement Administrator at [insert 800#] or to Settlement Class Counsel at 818-547-5300.

PAYMENT INFORMATION FORM

*Christian Matute v. Pilot Air Freight LLC d/b/a Pilot Freight
Services, Inc. and Best Buy Co., Inc.,*
United States District Court for the Northern District of California
Case No. 4:22-cv-00587 YGR

Please review this Payment Information Form and read its instructions carefully.

YOUR CREDITED QUALIFYING WORKWEEKS:

According to Defendants' records and the terms of the Settlement Agreement, you are entitled to a payment based on [REDACTED] Credited Qualifying Workweeks during the Settlement Class Period.

If you dispute the number of Credited Qualifying Workweeks displayed here, you may submit a dispute to the Settlement Administrator by (insert 60-day Deadline). See Section 7 of the Notice for details on how to submit a dispute.

YOUR ESTIMATED PAYMENT:

Based on your Credited Qualifying Workweeks, the Settlement Administrator estimates that your Individual Settlement Payment will be \$ [REDACTED].

INSTRUCTIONS FOR THIS PAYMENT INFORMATION FORM:

In order to ensure that you receive your share of the settlement proceeds, you **MUST** complete and return the Payment Information Form on the next page, including your Social Security Number/Tax ID Number, by no later than (insert 60-day Deadline) to the Settlement Administrator at:

Settlement Administrator
ADDRESS
CITY, STATE, ZIP
Tel: (XXX) XXX-XXXX
email@email.com

IF YOU DO NOT RETURN THE PAYMENT INFORMATION FORM PROVIDED ON THE NEXT PAGE, AND THE SETTLEMENT ADMINISTRATOR DOES NOT OTHERWISE HAVE YOUR SOCIAL SECURITY NUMBER/TAX ID NUMBER ON FILE, YOU WILL NOT RECEIVE ANY MONEY FROM THIS SETTLEMENT, YET WILL STILL BE BOUND BY ALL OF ITS TERMS.

Name: [CLAIMANT NAME] _____

Entity Name (if applicable): _____

Social Security Number/Tax ID Number: [CLAIMANT SSN/TAX ID (IF AVAILABLE)]

Address: _____

Phone: _____

Email Address: _____

BY SIGNING BELOW, you affirm that the information provided above is accurate. Regardless of whether you submit a completed Payment Information Form, you will be bound by the Settlement Agreement and the Settlement Group Members' release of claims against Defendants, including claims under the federal Fair Labor Standards Act ("FLSA"), unless you exclude yourself from the settlement. However, by signing below, you explicitly agree to release any FLSA claims against Defendants.

(Signature)

(Date)