

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CURTIS MARKSON, MARK MCGEORGE,
CLOIS MCCLENDON, and ERIC CLARK,
as named plaintiffs of a putative class of all
others similarly situated,

Case No. 5:17-cv-01261-SB (SPx)

Plaintiffs,

vs.

CRST INTERNATIONAL, INC., CRST
EXPEDITED, INC.; C.R. ENGLAND, INC.,
WESTERN EXPRESS, INC., SCHNEIDER
NATIONAL CARRIERS INC., SOUTHERN
REFRIGERATED TRANSPORT, INC.,
COVENANT TRANSPORT, INC.,
PASCHALL TRUCK LINES, INC.,
ENGLAND TRANSPORT, INC. and DOES
110, inclusive,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into this 8th day of September 2022 (the “Execution Date”) by and between Curtis Markson, Mark McGeorge, Clois McClendon, and Eric Clark (collectively, “Plaintiffs”), individually and on behalf of a Settlement Class, as defined in Paragraph 8 below, and C.R. England, Inc. (“England”). Plaintiffs and England shall be referred to herein collectively as the “Parties,” and each individually as a “Party.”

WHEREAS, Plaintiffs are prosecuting the above-captioned class action case (the “Action”) on their own behalf and on behalf of the Settlement Class against, among others, England;

WHEREAS, Plaintiffs allege that they were injured as a result of England's participation in an unlawful conspiracy to restrain competition through a "no-poach" agreement with the other trucking company defendants named in the Action, resulting in, among other things, suppressed compensation of their drivers, in violation of Section 1 of the Sherman Act and California antitrust laws (i.e., the Cartwright Act);

WHEREAS, England denies Plaintiffs' claims and allegations and has asserted defenses to Plaintiffs' claims in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for England, and this Agreement has been reached as a result of those negotiations;

WHEREAS, Plaintiffs, through their counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving the claims against England, according to the terms and conditions set forth below, is in the best interest of Plaintiffs and the Settlement Class because of the risks of continuing this Action against England, and the payment of the Settlement Fund and the value of the Injunctive Relief that England has agreed to provide pursuant to Paragraph 23 of this Agreement;

WHEREAS, England, despite its belief that it is not liable for the claims asserted and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense and inconvenience and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against England with respect to the allegations in the Action, as more particularly set forth below; and

WHEREAS, Plaintiffs recognize that because of joint and several liability, this Agreement with England does not impair Plaintiffs' ability to collect the full amount of damages to which they and the Settlement Class may otherwise be entitled from non-settling defendants in the Action, and the Parties also recognize that consistent with *Texas Industries v. Radcliffe Materials, Inc.*, 451 U.S. 630 (1981), there is no later right to contribution or indemnity by non-settling defendants as against England in the Action:

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned Parties that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees and, except as hereinafter provided, without fees and costs as to Plaintiffs, the Settlement Class, or England, subject to the approval of the court presiding over the Action (the "Court"), on the following terms and conditions.

A. Definitions.

1. "Cooperation" means and refers to those provisions set forth below in Paragraphs 31-33.

2. "Defendant(s)" means and refers to any party named as a defendant in the Action at any time up to and including the date when the Court has entered a final order certifying the Settlement Class described in Paragraph 8 and approving this Agreement under Federal Rule of Civil Procedure 23(e).

3. "Document(s)" is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term.

4. “Opt-Out Deadline” means and refers to the deadline set by the Court for the timely submission of requests by Settlement Class Members to be excluded from the Settlement Class.

5. “Plaintiff Class Representatives” means and refers to those Settlement Class Members, as defined in Paragraph 10 below, who are named plaintiffs in the Action.

6. “Releasee(s)” means and refers to England, its current and former parent companies, subsidiaries, and affiliated companies and entities, and each of the foregoing’s respective current and former officers, owners, directors, managers, members, shareholders, affiliates, subsidiaries, parent companies, attorneys, accountants, insurers, employees, agents, and representatives. “Releasees” does not include any Defendant in the Action or alleged co-conspirator other than England and the aforementioned related parties.

7. “Releasor(s)” means and refers to Plaintiff Class Representatives and the members of the Settlement Class, as defined in Paragraph 8 below, and each of their respective heirs, executors, successors-in-interest, administrators, and assigns.

8. “Settlement Class” means and refers to all current and former drivers “Under Contract” (as defined in Paragraph 12 below) as motor vehicle carrier drivers with CRST International, Inc., CRST Expedited, Inc., C.R. England, Inc., Western Express, Inc., Schneider National Carriers, Inc., Southern Refrigerated Transport, Inc., Covenant Transport, Inc., Paschall Truck Lines, Inc., and Stevens Transport, Inc., at any time from May 15, 2013 through April 1, 2022. Excluded from the Settlement Class are officers, directors, senior executives, and personnel in human resources and recruiting departments of the Defendants in the Action.

9. “Settlement Class Counsel” means and refers to the law firms of:

Susman Godfrey, L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

Mayall Hurley P.C.

2453 Grand Canal Boulevard
Stockton, CA 95207-8253

Ackermann & Tilajef, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035

Melmed Law Group, P.C.
1801 Century Park E, #850
Los Angeles, CA 90067

10. “Settlement Class Member(s)” means and refers to each member of the Settlement Class who has not timely elected to be excluded from the Settlement Class.

11. The “Settlement Fund” means and refers to the cash amount of nine hundred twenty-five thousand U.S. dollars (\$925,000.00 USD).

12. “Under Contract” means and refers to individuals who executed an agreement with a Defendant in which the person agreed, and became obligated to work, for that Defendant for a specified period of time in return for a commercial driver’s license education or other training provided by, funded by, or reimbursed by that Defendant and who was employed by that Defendant pursuant to that agreement at any time between May 15, 2013 and April 1, 2022.

B. Approval of This Agreement and Dismissal of Claims Against England.

13. Plaintiffs and England shall use their best efforts to effectuate this Agreement as quickly as practicable and in such a way as to reasonably prevent material prejudice to England should the effectuation of this Agreement be unsuccessful, including cooperating in seeking the Court’s approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the complete and final dismissal with prejudice of the Action as to the Releasees only. To the extent that information beyond which England and the other Defendants provided in connection with Plaintiffs’ earlier settlements in this Action is necessary to effectuate Class Notice, allocation, and payments to the Settlement Class, Plaintiffs and

England shall confer in good faith as needed regarding such information, with any disputes to be resolved by the Court.

14. By September 12, 2022, or another time mutually agreed to by Plaintiffs and England, Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement (the “Preliminary Approval Motion”). The Preliminary Approval Motion shall include (i) the proposed form of an order preliminarily approving this Agreement; (ii) authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all members of the Settlement Class, and (iii) all other filings required by applicable rules of procedure. Plaintiffs will share with England a draft of the Preliminary Approval Motion and all other settlement related filings, but excluding their attorneys’ Fee and Expense Application, no less than four business days before those materials are filed, and England will have the right to comment upon and object to any language set forth in the Preliminary Approval Motion or any related materials. In order to mitigate the costs of notice and the administration of the settlement, Plaintiffs shall endeavor, if practicable, to disseminate notice with any other settlements that have been or are reached in the Action but which have not already received final approval at the time the Notice Motion is filed. The text of the proposed order and notice shall be agreed upon by Plaintiffs and England before the Preliminary Approval Motion is filed with the Court. If the Court does not grant the Preliminary Approval Motion as filed, the Parties will negotiate in good faith to modify the Agreement directly, and endeavor to resolve any issue(s) to the satisfaction of the Parties and the Court. If the Parties are unable to reach agreement on modified terms, any Party has the right to rescind this Agreement in its entirety pursuant to the procedures set forth in Paragraphs 34 and 35 below. If the Court grants the Preliminary Approval Motion, any motion for final approval of this Agreement shall include a proposed form of order and final judgment that includes at least the terms set forth in Paragraph 15 below.

15. Plaintiffs shall seek entry of an order and final judgment in the Action, the text of which Plaintiffs and England shall agree upon in advance, in connection with the motion for final approval of this Agreement. The terms of that proposed order and final judgment will include, at a minimum, the following provisions:

a) certifying the Settlement Class described in Paragraph 8, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for the purposes of this settlement as a settlement class for the Action;

b) as to the Action, approving this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

c) as to England, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs or fees of any kind owed to the Settlement Class;

d) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration and consummation of this settlement, as well as over England, for the duration of its provision of Cooperation pursuant to this Agreement, to the United States District Court for the Central District of California;

e) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal in the Action as to England shall be final; and

f) providing that (i) the Court's certification of the Settlement Class is without prejudice to, or waiver of the rights of any Defendant to contest certification of any other

class proposed in the Action; (ii) the Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in the Action or on the Court's rulings concerning any Defendant's motion; and (iii) no Party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class, any attempt to appeal prior denials of any motion to certify any such class, or any Defendant's motion.

16. This Agreement shall become final when (i) the Court has entered in the Action a final order certifying the Settlement Class described in Paragraph 8 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and has entered a final judgment in the Action dismissing the Action with prejudice as to England and without costs other than those provided for in this Agreement; and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to England described in subparagraph (i) hereof has expired in the Action or, if appealed, approval of this Agreement and the final judgment in the Action as to England has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. As of the Execution Date, Plaintiffs and England shall be bound by the terms of this Agreement, which shall not be rescinded except in accordance with Paragraphs 14, 22(h) & (i), 24, and 34-35 of this Agreement.

17. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, Documents, and discussions associated with them, shall be deemed or construed to be an admission of liability by England, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by England, or an admission of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the

Action. Further, any evidence of any of the foregoing shall not be discoverable or used in any way, whether in the Action, or in any other arbitration, action, or proceeding whatsoever, against England. England also specifically denies that the Action is appropriate for class treatment for any purpose other than for settlement. England maintains that, among other things, it has complied with all federal and state laws and regulations in all respects. England has entered into this Agreement for the purpose of terminating litigation and specifically terminating the Action against it. England does not admit any wrongdoing or liability to Plaintiffs or the Settlement Class and specifically denies any wrongdoing, liability, and the allegations of the Fourth Amended Complaint filed in the Action (“Fourth Amended Complaint”).

18. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by England, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or other proceeding, whether by the Parties to this Agreement or by any third party, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue.

19. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 16 of this Agreement, and in consideration of payment of the Settlement Fund, as specified in Paragraph 21 of this Agreement, and for other valuable consideration, the Releasors fully, finally, and forever release, acquit, and discharge the Releasees from any and all claims, demands, actions, suits, and causes of action under any federal, state, or local law of any jurisdiction in the United States (whether based on any statute, regulation, common law, or any other theory) that Releasors, or any of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, arising out of or relating to any conduct

that was alleged or could have been alleged in the Action, including in the Fourth Amended Complaint or prior complaints, or any act or omission of the Releasees (or any of them) concerning England's alleged participation, from May 15, 2013 through April 1, 2022, in any conspiracy not to hire truck drivers Under Contract with any other motor carrier, including but not limited to any claims or allegations that, at any point in time, one or more of the Releasees in any way attempted to suppress or diminish wages or pay of any kind or diminish or restrict other employment opportunities or mobility for Under Contract truck drivers because of their "Under Contract" status (all of the foregoing, collectively, the "Released Claims"). Notwithstanding the foregoing, this Agreement does not settle or compromise any claim by Plaintiffs or any Settlement Class Member asserted in the Action against any Defendant or alleged co-conspirator other than England and/or the Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by Plaintiffs and the Settlement Class. All rights of any Settlement Class Member, if any, against any and all former, current, and future Defendants or alleged co-conspirators or any other person other than Releasees are specifically reserved by Plaintiffs and Settlement Class Members. Plaintiffs and Settlement Class Counsel covenant that upon approval of this Agreement, England shall have no liability whatsoever under any legal theory or factual basis to Plaintiffs, the Settlement Class, or Settlement Class Counsel regarding the Released Claims, other than England's covenants under this Agreement.

20. In addition to the provisions of Paragraph 19 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final as set forth in Paragraph 16, any and all provisions, rights, and benefits relating to the Released Claims that are conferred by (a) California Civil Code section 1542, which states:

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;

or (b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code section 1542. Each Releasor acknowledges that he, she, or it may hereafter discover facts different from or in addition to those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 19 of this Agreement. Nevertheless, each Releasor hereby expressly waives and fully, finally, and forever settles and releases, as of the Execution Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Plaintiffs have agreed to release pursuant to Paragraph 19, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Additionally, the Parties agree that California Labor Code sections 206.5 and 2804 (and any similar sections) do not invalidate any provision of this Agreement because, among other things, the claims in this Action are disputed and contested, and the Settlement was bargained for at arms' length, with the assistance of a mediator, and approved by the Court.

D. Consideration to the Settlement Class.

21. Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, England shall pay the Settlement Fund amount of nine hundred twenty-five thousand dollars (\$925,000.00 USD). The Settlement Fund, in conjunction with settlement amounts received from other settling Defendants (other than Western Express, Inc., Schneider National Carriers, Inc., Southern Refrigerated Transport, Inc., Covenant Transport, Inc., Paschall Truck Lines, Inc., and Stevens Transport, Inc.), shall be used to pay (i) all notice and administrative fees incurred in administering the Settlement, including those fees incurred by the Settlement Administrator; (ii) any incentive awards to the Plaintiff Class Representatives awarded by the Court; (iii) any attorneys' fees and expenses awarded by the Court to Class Counsel; and (iv) all payments to

the Settlement Class. There will be no reversion of the Settlement Fund to England except as provided in Paragraphs 14, 22(h) & (i), 24, and 34-35 of this Agreement. The Settlement Fund shall be paid into escrow accounts in United States Dollars to be administered in accordance with the provisions of Paragraph 22 of this Agreement (the “Escrow Accounts”). England shall fund 5% of the Settlement Fund within seven (7) business days following entry of any order preliminarily approving this Agreement by the Court, and the remaining balance of the Settlement Fund within ten (10) business days after final approval of this Agreement by the Court.

22. Escrow Accounts.

a) The Escrow Accounts will be established at a financial institution selected by Settlement Class Counsel, with such financial institution serving as escrow agent (“Escrow Agent”) subject to escrow instructions mutually acceptable to Settlement Class Counsel and England, such escrow to be administered by the Escrow Agent under the Court’s continuing supervision and control.

b) The Escrow Agent shall cause the funds deposited in the Escrow Accounts to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds rated Aaa and AAA, respectively by Moody’s Investor Services and Standard and Poor’s, invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then-current market rates.

c) All funds held in the Escrow Accounts shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court,

until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

d) Plaintiffs and England agree to treat the Settlement Fund as being at all times qualified settlement funds within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 22, including the relation-back election (as defined in Treas. Reg. § 1.468B-1) back to the earliest possible date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

e) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the administrator shall be Settlement Class Counsel. Settlement Class Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the election described in Paragraph 22(d)) shall be consistent with Paragraph 22(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest, or penalties), on income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 22(f) hereof.

f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon England or any other Releasee with respect to any

income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as qualified settlement funds for federal or state income tax purposes (collectively, the “Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 22(d) through 22(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in Paragraph 22(e) (collectively, the “Tax Expenses”)) shall be paid out of the Settlement Fund.

g) Neither England nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes, the Tax Expenses, the reporting or payment of the Taxes or Tax Expenses, or any other liabilities or fees described in Paragraph 22. Further, the Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). England, any other Releasee, and their respective counsel shall not be responsible or have any liability for any matter set forth herein. Plaintiffs and England agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 22(d) through 22(f).

h) If this Agreement does not receive preliminary or final Court approval, including approval of the Settlement Class as defined in Paragraph 8, or if the Action is not

certified as a class action for settlement purposes, or if any Party opts to rescind this Agreement pursuant to Paragraphs 14, 24, or 34-35, then all amounts paid by England into the Settlement Fund (other than costs expended or incurred in accordance with Paragraph 25, up to a maximum of \$50,000) shall be returned to England from the Escrow Account by the Escrow Agent, along with any interest accrued thereon, within thirty (30) calendar days of the occurrence of any of the conditions described in this Paragraph.

i) If this Agreement does not receive preliminary or final Court approval, including approval of the Settlement Class as defined in Paragraph 8, or if the Action is not certified as a class action for settlement purposes, or if any Party opts to rescind this Agreement pursuant to Paragraphs 14, 24, or 34-35, then the status of the Action with respect to England will be deemed to return to the status at the time immediately prior to the filing of the Notice of Settlement (including with respect to England's right to have its motion for summary judgment heard and ruled upon by the Court) and as if the Parties had never executed this Settlement Agreement; and

j) To the extent required by any court or otherwise necessary, Plaintiffs will take all necessary steps to give effect to Paragraphs 22(h) and 22(i) above.

23. Injunctive Relief. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, England further agrees to the following injunctive relief:

a) England will not send "Under Contract" letters to the other Defendants concerning any member of the Settlement Class who was involuntarily terminated by England or whom England considers ineligible for rehire.

b) England will not sue any of CRST International, Inc., CRST Expedited, Inc., Stevens Transport, Inc., Western Express, Inc., Schneider National Carriers, Inc., Southern Refrigerated Transport, Inc., Covenant Transportation, Inc., or Paschall Truck Lines, Inc., including those entities' parent companies, subsidiaries, agents, heirs, or assigns, for hiring any member of the Settlement Class due to their Under Contract status with England; *provided, however*, that nothing herein prevents England from asserting a cause of action against either (a) any member of the Settlement Class for violating a valid and enforceable non-compete or other contractual obligation, or (b) any motor carrier for tortious interference of contract as defined by applicable law (not merely normal advertising or the mere hiring of England's at-will members of the Settlement Class), and nothing herein shall be construed as limiting any defenses to such a claim by either a member of the Settlement Class or a carrier.

c) England, within a reasonable time following execution of this Agreement not to exceed 120 days, will adopt an express policy that prohibits refusing to hire a driver involuntarily terminated by another carrier on the sole basis that the driver is Under Contract with another carrier, except when England has a good faith belief or understanding that the involuntarily terminated driver is subject to a valid and enforceable non-compete or similar obligation. Nothing in this Agreement shall preclude England from applying its own hiring criteria or refusing to hire any driver who does not meet England's hiring criteria, in its sole and exclusive discretion, on any grounds other than the driver's Under Contract status with another carrier. Similarly, and notwithstanding anything to the contrary herein, nothing in this Agreement shall preclude England from declining to hire a

driver if it, in its sole discretion, believes or determines that hiring the driver could subject or expose England to legal liability.

d) For the avoidance of doubt, subject to Paragraph 23(a) above, England may take any action, including by letter or other correspondence or means of communication, to notify other motor carriers of their potential interference with England's non-compete agreements with its Under Contract drivers and to enforce such agreements.

24. **Exclusions.** Within ten (10) business days after the Opt-Out Deadline, Settlement Class Counsel will cause copies of timely requests for exclusion from the Settlement Class to be provided to counsel for England. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, England reserves all of its legal rights and defenses, including but not limited to any defenses relating to whether the excluded Settlement Class Member has standing to bring any claim. If fifteen percent (15%) or more of the individuals constituting the Settlement Class opt out of the Settlement Class, England will have the unilateral right to withdraw from this settlement and rescind this Agreement in its entirety and may do so, in its sole discretion, by providing notice through the procedure set forth in Paragraph 34 below. If England elects to rescind this Agreement, then all parts of the Settlement Fund shall be returned to England as set forth in Paragraph 35 below.

25. **Payment of Expenses.**

a) England agrees to permit use of a portion of the Settlement Fund towards notice to the Settlement Class and the costs of administration of the Settlement Fund. Plaintiffs shall be responsible for selecting the third-party Settlement Administrator for administration of the settlement. The first \$50,000 of such notice and administration expenses are not recoverable if this settlement does not become final or is terminated to the extent such funds have actually been expended or incurred for notice and administration costs. Other than as set

forth in this Paragraph 25, England shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court, appeals, trials, or the negotiation of other settlements, or for class administration and costs.

b) Subject to Paragraph 25(a) above, in order to mitigate the costs of notice and administration of the settlement, Plaintiffs shall endeavor, if practicable, to disseminate notice with any other settlements reached with England or other Defendants in the Action, and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.

E. The Settlement Fund.

26. Releasors' sole recourse for settlement and satisfaction against the Releasees of all Released Claims is against the Settlement Fund, and Releasors shall have no other recovery against England or any other Releasee.

27. The "Net Settlement Fund" shall consist of the Settlement Fund less: (i) all administrative fees incurred in administering all class notice and the settlement, including those fees incurred by the Settlement Administrator; (ii) any incentive awards to the Plaintiff Class Representatives; and (iii) any attorneys' fees and expenses. The Net Settlement Fund shall be distributed to the Settlement Class (i.e., those who do not opt out pursuant to Paragraph 52) pro rata based on the number of weeks Class Members worked for one of the Defendants. No submission of a Claim Form will be required to receive a settlement distribution. All settlement payments will not be subject to deductions and withholdings, for which IRS Forms 1099-MISC will be issued.

28. After this Agreement becomes final within the meaning of Paragraph 16, the Settlement Fund shall be distributed in accordance with the plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including but not limited to the costs and expenses of such distribution and administration, except as expressly otherwise provided in Paragraph 25 of this Agreement.

29. Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all fees, expenses, and costs, as provided by Court order. England and the other Releasees shall not be liable for any costs, fees, or expenses of any of Plaintiffs' or the Settlement Class's respective attorneys, experts, advisors, agents, or representatives; rather, all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

30. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards for Plaintiff Class Representatives.

a) Settlement Class Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for: (i) an award of attorneys' fees not in excess of one-third of the benefits created for the Settlement Class (that is, the value of the Settlement Fund plus the value of non-cash relief secured); plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Action, Plaintiff Class Representative incentive awards, plus interest on such attorneys' fees, costs and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid) as may be awarded by the Court (the "Fee and Expense Award"), all of which may be paid solely out of the Settlement Fund. Plaintiffs will move for an incentive award to be paid from the Settlement

Fund not to exceed \$5,000 per Plaintiff Class Representative. Settlement Class Counsel reserve the right to make additional applications for Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall England or any other Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

b) Subject to Court approval, Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses, including but not limited to attorneys' fees and past, current, or future litigation expenses and incentive awards, and in no event shall England or any other Releasee be responsible to pay any such expenses, except to the extent they are paid out of the Settlement Fund. Settlement Class Counsel's Fee and Expense Award(s), as awarded by the Court, shall be payable at Plaintiffs' option immediately upon the entry of an Order approving such Fee and Expense Award(s), or such later date if required by the Court, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceeding on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or if the Agreement is rescinded or terminated pursuant to Paragraphs 14, 22(h) & (i), 24, or 34-5.

c) The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs and expenses, and incentive awards for Plaintiff Class Representatives to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's

consideration of the fairness, reasonableness and adequacy of the Settlement, and any order or proceeding related to the Fee and Expense Application(s), or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

d) Neither England nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel and/or Plaintiffs of any Fee and Expense Award in the Action.

e) Neither England nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel, Plaintiffs and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

F. Cooperation.

31. In return for the release and discharge provided herein, England agrees, if requested, to timely prepare a declaration, pursuant to Rule 902(11) of the Federal Rules of Evidence, for all Documents produced by England in this Action.

32. If this Agreement fails to receive preliminary or final approval by the Court as contemplated in Paragraphs 13-16 hereof, including final approval of the Settlement Class as defined in Paragraph 8, or if it is terminated by any Party under any provision herein, the Parties agree that neither Plaintiffs nor Settlement Class Counsel shall be permitted to introduce into evidence against England, at any hearing or trial, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any declaration provided in connection with any Cooperation by England, other Releasees, or their counsel. This limitation shall not apply to any discovery served or

produced as part of the Action, in which Settlement Class Counsel participated. Notwithstanding anything contained herein, Plaintiffs and the Settlement Class are not relinquishing any existing rights to pursue discovery as may be permitted by law against England in the event that this Agreement fails to receive preliminary or final approval by the Court as contemplated in Paragraphs 13-16 hereof, including final approval of the Settlement Class as defined in Paragraph 8, or in the event that it is terminated by any Party under any provision herein.

33. If either England or Plaintiffs elects to disclose publicly the fact that a settlement has been reached in this Action (other than in the Preliminary Approval Motion or other, subsequent filing in this Action), neither England nor Plaintiffs shall disclose anything other than (1) England and Plaintiffs agreed to a settlement to resolve the Action; (2) the amount of the Settlement Fund; and (3) England denies any and all wrongdoing and liability and the allegations made by Plaintiffs in the Action. Nothing in this provision shall be used to, or otherwise restrict, Plaintiffs' and Settlement Class Counsel's ability to discuss with any member of the Settlement Class this settlement, the Action, anything related to the Action, or any information that appears in the public record.

G. Rescission If This Agreement Is Not Approved or Final Judgment Is Not Entered.

34. In addition to any rights of rescission set forth above, England and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety if any of the following conditions arise: (a) if the Court refuses to approve this Agreement or any material part hereof, (b) if the Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in this Agreement or a substantially similar definition later agreed upon by the Parties, (c) if approval of this Agreement or the Settlement Class is modified or set aside on appeal, (d) if the Court does not enter the final judgment provided for in Paragraph 15 of this Agreement, or (e) if the Court enters the final judgment and appellate review is sought, and on such review, such final

judgment is not affirmed in its entirety. Before exercising this right to rescind, the Parties will negotiate in good faith to modify the Agreement and endeavor to resolve any issue(s) to the satisfaction of the Parties and the Court. If the Parties fail to reach agreement on modified terms or fail to resolve any issues to the Court's satisfaction, or one of the Parties fails to negotiate in good faith, the Parties shall have fifteen (15) days from the date of one or more of such failures to exercise this right to rescind. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 47. England does not waive, and instead expressly reserves, all of its rights to defend against the claims alleged in the Action, including, but not limited to, its right to move for summary judgment as to the claims against England if the Court does not grant preliminary or final approval of the Settlement Class. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses or incentive awards to Plaintiffs awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment, unless such modification or reversal causes harm or prejudice to England.

35. If this Agreement does not become final as set forth in Paragraph 16, or if this Agreement otherwise is terminated pursuant to Paragraphs 14, 22(h) & (i), 4, or 34-35, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Accounts (including interest earned thereon) shall be returned to England within thirty (30) calendar days, less only disbursements up to \$50,000 made in accordance with Paragraph 25 of this Agreement. England expressly reserves all rights and defenses if this Agreement does not become final.

36. Further, and in any event, Plaintiffs and England agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, (a) shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law or of any liability or wrongdoing whatsoever by England or the other Releasees, or of (ii) the

truth of any of the claims or allegations contained in the Fourth Amended Complaint or any other pleading filed in the Action; and (b) shall not be used against England, and evidence thereof shall not be discoverable or used in any way, in the Action or in any other proceeding, whether by a Party to this Action or by any third party. England specifically denies any wrongdoing, any liability, and the allegations of the Fourth Amended Complaint.

37. This Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to provide, through this Agreement, for a complete resolution of any of the claims asserted by Plaintiffs with respect to each Releasee as provided in this Agreement.

38. The Parties contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 13-16 hereof, appropriate notice (i) of the settlement and (ii) of a hearing at which the Court will consider the approval of this Agreement, will be given to the Settlement Class.

H. Miscellaneous.

39. England shall submit all materials required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and Plaintiffs shall cooperate to provide England with necessary information regarding the Settlement Class and Plaintiffs' claims.

40. Plaintiffs and Settlement Class Counsel represent that, as of the Execution Date, they have not made or sponsored any referral for prosecution of any Releasee to any state or federal agency, including but not limited to the U.S. Department of Justice, U.S. Department of Labor, California Attorney General's Office, and California Department of Industrial Relations. Plaintiffs and Settlement Class Counsel further represent that they do not presently intend to make or sponsor any such referral for prosecution of any Releasee.

41. Subject to any limitations imposed by applicable ethical rules, Settlement Class Counsel, and each of them, represent that they (a) have no current intention to file or prosecute any other legal proceedings against any Releasee over the issues, claims, or conduct that were or could have been presented in this Action, including but not limited to any claims or legal proceedings brought on behalf of any drivers of any non-Defendant motor carriers for any of the conduct alleged in the Released Claims or for any conspiracy or other conduct similar to that alleged in the Released Claims (all of the foregoing collectively, a “Future Claim”); (b) do not have any clients who have engaged them to file or prosecute any Future Claim; (c) have not had, and do not currently intend to have in the future, any discussions with any other attorneys regarding the possibility of filing or prosecuting a Future Claim; (d) do not currently intend to solicit or actively seek clients, or advertise the availability of representation of any person or entity, seeking relief against any of the Releasees for any Future Claim, and (e) do not currently intend to lodge any complaints against any of the Releasees through any mechanism for any Future Claim. Nothing herein shall be construed as, is intended to be, or is a restriction on Settlement Class Counsel’s representation of current clients or the practice of law, including restricting practicing in certain areas or cases in the future.

42. The United States District Court for the Central District of California shall retain jurisdiction over the implementation, enforcement, application, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and England, including challenges to the reasonableness of any Party’s actions. This Agreement shall be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or conflict of laws principles. England will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction. If this Agreement does not receive final,

non-appealable Court approval, England reserves all claims and defenses, including but not limited to those as to the lack of jurisdiction and venue over it in this Action, and Plaintiffs reserve all arguments that any such claims and defenses are invalid.

43. This Agreement constitutes the entire, complete and integrated agreement among Plaintiffs and England pertaining to the settlement of the Action against England, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between Plaintiffs and England in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and England, and approved by the Court.

44. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and England. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasers. The Releasees (other than England entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

45. This Agreement may be executed in counterparts by Plaintiffs and England, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Agreement. Execution of this Agreement by the Plaintiff Class Representatives and Settlement Class Counsel shall have the same force and effect as if the Agreement were executed by each Settlement Class Member.

46. Neither Plaintiffs nor England shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

47. Where this Agreement requires any Party to provide notice or any other communication or Document to the other, such notice shall be in writing, and such notice, communication or Document shall be provided by facsimile, or electronic mail (provided that the recipient acknowledges having received that email, with an automatic “read receipt” or similar notice constituting an acknowledgement of an email receipt for purposes of this Paragraph), or letter by overnight delivery to the undersigned counsel of record for the Party to whom notice is being provided.

48. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement subject to Court approval. Plaintiff Class Representatives additionally represent and warrant that they have not assigned any claims covered by this Agreement to any third party. By signing this Agreement, the Plaintiff Class Representatives further agree not to object to the terms of this Agreement or submit any request to opt out of the Settlement Class.

H. Notice Process.

49. Defendants have provided contact information for Settlement Class Members to the Settlement Administrator in conjunction with the prior settlements in this case. The information includes information to effectuate class notice (name, driver identification number, last known address, last known e-mail address, and last known phone number), allow the Settlement Administrator to provide any required tax reporting (Social Security numbers), and to facilitate calculating class members’ distribution (dates of hire and termination).

50. Upon preliminary approval and as authorized by the Court, the Settlement Administrator will prepare to disseminate class notice via the postal service, e-mail, and the establishment of a settlement website. This shall include conducting searches on the national

change of address database to update any addresses provided by the Defendants consistent with their normal practices, including skip tracing.

51. Notice will be accomplished three ways. First, the Settlement Administrator will mail a copy of the proposed postcard notice, *see Exhibit A*, to all Class Members by first class U.S. Mail, using the most current mailing address information provided by the Defendants or obtained by the Settlement Administrator in its searches for updated address information. The postcard notice will be mailed to all Class Members via first class U.S. Mail as soon as practicable after the Court's granting of preliminary approval. The postcard notice will direct Class Members to review the long form notice, *see Exhibit B*, hosted on a settlement website to be established by the Settlement Administrator. The settlement website established by the Settlement Administrator will allow Class Members to easily access information regarding the settlements and the litigation generally. Notice will also be provided to Class Members via e-mail in addition to the postcard notice in order to reach as many Class Members as possible. A copy of the proposed e-mail notice is attached as **Exhibit C**.

52. The proposed notice will inform Class Members of their rights to exclude themselves from the settlements. If a Class Member wishes to exclude themselves from the settlement, they will no longer be legally bound the settlement and will not be able to receive a payment from the settlement. Class Members that request exclusion will keep the right to sue or continue to sue England on their own for the legal claims that the settlement resolves. If a Class Member does not want the benefits offered by the settlement and does not want to be legally bound by the settlement, or if he or she wishes to pursue his or her own separate lawsuit against England, he or she must exclude him or herself by submitting a written request to the Settlement Administrator stating his or her intent to exclude him or herself from the settlements by the

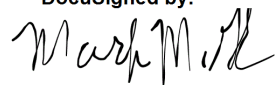
Response Deadline. The Response Deadline for Class Members to opt out of, or file objections to, the settlements will be forty-five (45) days from the date of mailing of the postcard notice.


53. The long form notice will also inform Class Members of their right to object to the Settlement. Any Class Member who has not excluded themselves can object to the settlement if they have a concern. The notice will also inform Class Members of their ability to speak at the final approval hearing. If a Class Member or their attorney want to appear and speak at the hearing, the objection must contain: (1) a detailed description of any and all evidence to be offered at the hearing, including photocopies of any and all exhibits to be introduced; and (2) the names and addresses of any witnesses expected to testify at the hearing. Objections, along with any supporting material to be submitted, must be filed with the Court, with a copy mailed to the Settlement Administrator, Settlement Class Counsel, and Counsel for England postmarked by the Response Deadline.

FOR PLAINTIFFS:

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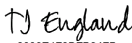
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Mark McGeorge

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Clois McClendon

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Eric Clark

FOR DEFENDANT C.R. ENGLAND, INC.

DocuSigned by:

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Name: TJ England

Title: Chief Legal Officer

COUNSEL FOR PLAINTIFFS:

**COUNSEL FOR DEFENDANT C.R.
ENGLAND, INC.:**

Marc M. Seltzer
Steven G. Sklaver
Krysta K. Pachman
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Matthew R. Berry
Ian M. Gore
SUSMAN GODFREY L.L.P.
1201 Third Ave., Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883

Robert J. Wasserman
William J. Gorham
MAYALL HURLEY P.C.
2453 Grand Canal Boulevard
Stockton, CA 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Craig J. Ackermann
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Dr., Suite 610
Los Angeles, CA 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635

Jonathan Melmed
MELMED LAW GROUP, P.C.
1801 Century Park E, #850
Los Angeles, CA 90067
Telephone: (310) 824-3838
Facsimile: (310) 862-6851



Drew R. Hansen
dhansen@nossaman.com
Seth M. Goldstein
sgoldstein@nossaman.com
NOSSAMAN LLP
18101 Von Karman Ave.
Suite 1800
Irvine, CA 92612
Telephone: (949) 833-7800
Facsimile: (949) 833-7878

COUNSEL FOR PLAINTIFFS:

COUNSEL FOR DEFENDANT C.R. ENGLAND, INC.:

DocuSigned by:

Robert Wassermann

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Marc M. Seltzer
Steven G. Sklaver
Krysta K. Pachman
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Drew R. Hansen
dhansen@nossaman.com
Seth M. Goldstein
sgoldstein@nossaman.com
NOSSAMAN LLP
18101 Von Karman Ave.
Suite 1800
Irvine, CA 92612
Telephone: (949) 833-7800
Facsimile: (949) 833-7878

Matthew R. Berry
Ian M. Gore
SUSMAN GODFREY L.L.P.
1201 Third Ave., Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883

Robert J. Wasserman
William J. Gorham
MAYALL HURLEY P.C.
2453 Grand Canal Boulevard
Stockton, CA 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Craig J. Ackermann
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Dr., Suite 610
Los Angeles, CA 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635

Jonathan Melmed
MELMED LAW GROUP, P.C.
1801 Century Park E, #850
Los Angeles, CA 90067
Telephone: (310) 824-3838
Facsimile: (310) 862-6851