

## CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

### I. Recitals.

A. Introduction. This class action settlement agreement (the “Settlement Agreement”) details and finalizes the terms for settlement of class claims set forth between the parties on November 9, 2016. This Settlement Agreement is entered by and among Plaintiffs Kevin Helde, Jon Bodily, and Max Tena (“Plaintiffs”), individually and on behalf of the members of the proposed settlement class defined herein in Section II.A (the “Settlement Class”), and Defendant Knight Transportation, Inc. (“Knight” or “Defendant”), (collectively, the “Parties”), in the matter of *Helde, et. al v. Knight Transportation Inc.*, No. 2-12-CV-00904 RSL (the “Action”).

B. Purpose. Pursuant to the terms set forth below, Plaintiffs and Knight enter into this Settlement Agreement to bring about a full, complete, and final resolution of all claims asserted in the Action against Knight by Plaintiffs and the Settlement Class. The parties agree to settle the Action as it relates to Knight pursuant to the provisions of this Settlement Agreement, which are set forth in detail below. Plaintiffs and counsel for Plaintiffs and the proposed Settlement Class (“Class Counsel”) judge the Settlement Agreement to provide fair, reasonable, and adequate relief to the Settlement Class and to be in the best interests of the Settlement Class.

### II. Settlement Terms.

#### A. The Settlement Class.

This Settlement Agreement is entered into on behalf of the current and former Washington-based drivers whom Knight previously identified as Class members in this Action (the “Original Class Members”), all of whom are listed in Exhibit A. If any one of these drivers submits a timely exclusion request form as set forth in Section II.J of this Agreement, that driver shall lose his Original Class Member status and shall not benefit from nor be bound by the Settlement Agreement. The Settlement Class shall be composed of those Original Class Members who do not submit a timely exclusion request form as set forth in Section II.J of this Settlement Agreement.

#### B. Settlement Class Proceeds.

Knight shall pay a total of \$1,450,000 to the Settlement Class (the “Settlement Class Proceeds”) with no right to reversion. The Settlement Class Proceeds shall be allocated among the claims of the Settlement Class as follows:

1. \$75,000 shall go to the Settlement Class in relation to the orientation pay, advanced payroll deduction, and weekly minimum wage claims.

2. \$500,000 shall go to the Settlement Class in relation to the per diem claim.
3. \$875,000 shall go to the Settlement Class in relation to the rest break claim.

C. Service Awards and Net Settlement Class Fund.

Subject to Court approval, each of the three named Plaintiffs shall receive a service award of \$10,000 from the Settlement Class Proceeds. If approved, these proposed service awards shall be paid in recognition of and as consideration for the efforts of Plaintiffs in representing the Settlement Class.

The remaining \$1,420,000 from the Settlement Class Proceeds shall be considered the Net Settlement Class Fund and shall be distributed to the Settlement Class Members in accordance with Section II.D.1.

If the Court awards anything less than \$10,000 to any named Plaintiff in relation to his proposed service award, then the difference between \$10,000 and the amount awarded shall be added to the Net Settlement Class Fund.

D. Settlement Administrator.

Knight shall retain CPT Group to act as and effectuate the duties of the Settlement Administrator in accordance with this Settlement Agreement. Knight shall be solely responsible for paying any fees, costs, or other charges imposed by the Settlement Administrator, and any such payments shall be separate from and in addition to the Settlement Class Proceeds identified above.

E. Class Counsel's Attorneys' Fees and Litigation Costs.

The amount of reasonable attorneys' fees and litigation costs to be paid to Class counsel shall be decided by the Court on Plaintiffs' motion, with Knight having complete rights to challenge and contest that motion, unless the Parties are able to reach an agreement as to the total amount before the motion is filed. Knight shall pay the awarded or agreed upon attorneys' fees and litigation costs separately from and in addition to the Settlement Class Proceeds identified above.

Plaintiffs shall move for an award of attorneys' fees and litigation costs, whether to be decided by the Court or in accordance with the Parties' agreement, no later than fourteen calendar days after the Court preliminarily approves the Settlement Agreement.

F. Effective Date and Settlement Payments.

This Settlement Agreement shall become effective when all of the following events have occurred: (i) this Settlement Agreement has been executed by the Parties and their counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) notice has been given to the Original Class Members, providing them with an opportunity to opt out of the Settlement; (iv) the Court has ruled on Class Counsel's motion for attorneys' fees and litigation costs or the Parties have reached an agreement on fees and costs before such ruling is made; (v) the Court has held a formal fairness hearing and entered a final order and judgment certifying the Settlement Class, dismissing this case with prejudice, and approving this Stipulation of Settlement; and (vi) the effective date has occurred. The effective date of the Settlement ("Effective Date") shall be the later of either (1) the expiration of the time for filing an appeal from the Court's entry of a final judgment order (31 days from Entry of Judgment) or (2) if a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial approval of the Settlement. No money will be distributed unless and until the Effective Date occurs.

Within ten days of the Effective Date, Knight shall pay the Settlement Class Proceeds into an account maintained by the Settlement Administrator.

Within ten days of the Effective Date, Knight shall pay to Class Counsel all attorneys' fees and litigation costs awarded by the Court or agreed to by the Parties.

Within thirty days of the Effective Date, Knight shall pay to the Settlement Administrator all funds necessary to cover Knight's appropriate and lawfully required employer-side payroll taxes. Payment of these taxes shall be separate from and in addition to the Settlement Class Proceeds. Any payments made to Settlement Class Members shall not be construed as compensation for purposes of determining eligibility for unemployment compensation or any benefits from Knight, including health and welfare benefits. Specifically, payments made under this Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which any Original Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Original Class Members may be entitled under any benefit plans.

G. Distribution of the Settlement Class Proceeds.

Each Settlement Class Member shall be entitled to an individual award from the Net Settlement Class Fund. This individual award shall be the sum of the Settlement Class Member's proportional shares, and those shares shall be calculated by Class Counsel according to the following formulas:

1. The formula for the orientation pay claim shall be  $(X / Y * 75000 / 1450000 * \text{Net Settlement Class Fund} * .5475)$ , where X is the individual Settlement Class Member's actual damages plus interest for the orientation pay claim as calculated by Class Counsel's expert, and Y is the total in actual damages plus interest for all Settlement Class Members in relation to that same claim as calculated by Class Counsel's expert.
2. The formula for the advanced payroll deduction claim shall be  $(X / Y * 75000 / 1450000 * \text{Net Settlement Class Fund} * .03522)$ , where X means the individual Settlement Class Member's actual damages plus interest for the advanced payroll deduction claim as calculated by Class Counsel's expert, and Y means the total in actual damages plus interest for all Settlement Class Members in relation to that claim as calculated by Class Counsel's expert.
3. The formula for the weekly minimum wage claim shall be  $(X / Y * 75000 / 1450000 * \text{Net Settlement Class Fund} * .4173)$ , where X means the years worked by the individual Settlement Class Member as calculated by Class Counsel's expert, and Y means the total in years worked by all Settlement Class Members as calculated by Class Counsel's expert.
4. The formula for the per diem claim shall be  $(X / Y * 500000 / 1450000 * \text{Net Settlement Class Fund})$ , where X means the individual Settlement Class Member's actual damages plus interest for the per diem claim as calculated by Class Counsel's expert, and Y means the total in actual damages plus interest for all Settlement Class Members in relation to that claim as calculated by Class Counsel's expert.
5. The formula for the rest break claim shall be  $(X / Y * 875000 / 1450000 * \text{Net Settlement Class Fund})$ , where X means the years worked by the individual Settlement Class Member as calculated by Class Counsel's expert, and Y means the total in years worked by all Settlement Class Members as calculated by Class Counsel's expert.

No later than twenty days after the deadline for exclusion requests, Class Counsel shall produce to the Settlement Administrator an Excel spreadsheet listing the gross amount of each Settlement Class Member's individual award. Each individual award shall be allocated as 66.66 percent being for payment of non-wage penalties and interest and 33.34 percent being for payment of wages. This allocation shall not apply

to the service awards to the named Plaintiffs because no part of such awards is for the payment of wages.

The Settlement Administrator shall be responsible for reporting all settlement award payments and for forwarding all payroll taxes, withholdings, and other deducted amounts associated with the wage portions of settlement award payments to the necessary government entities. The Settlement Administrator shall report the wage portions of settlement award payments on IRS Forms W-2 and shall report the non-wage portions of settlement award payments on IRS Forms 1099 (marked "Other Income").

Within ten days of the Effective Date, the Settlement Administrator shall disclose the following information to the Parties with respect to each Settlement Class Member: the wage portion of the member's gross award, the non-wage portion of the member's gross award, the taxes withheld from the wage portion of the member's gross award, and the amount of Knight's employer-side taxes for the wage portion of the member's gross award.

Within thirty days of the Effective Date, the Settlement Administrator shall prepare two checks (the "Settlement Checks") to each Settlement Class Member: one for the wage portion of the award (after all proper tax withholdings) and one for the non-wage portion of the award (with no tax withholdings). The Settlement Checks shall be drawn on the account of the Settlement Class Proceeds.

Within thirty days of the Effective Date, the Settlement Administrator shall distribute any Court-approved service awards to Plaintiffs. These awards shall not be characterized or taxed as wages. The Settlement Administrator shall report the service award payments on IRS Forms 1099 (marked "Other Income").

Settlement Class Members shall have 180 calendar days from distribution to cash their Settlement Checks. If a Settlement Check remains uncashed 210 days after the Effective Date, the funds associated with that check shall be deemed unclaimed and abandoned, and the Settlement Administrator shall promptly request the placement of a stop payment on the check. The funds from each unclaimed and abandoned Settlement Check as well as any associated payroll taxes, withholdings, or other deducted amounts shall be disbursed to the Legal Foundation of Washington.

Within 230 days of the Effective Date, the Settlement Administrator shall provide the Parties with a final accounting of all disbursements from the Settlement Class Proceeds.

H. Class Notice.

1. The Parties agree to request approval of the form of notice attached hereto as Exhibit B. The fact that the Court may require changes in the form of notice does not invalidate this Settlement Agreement if the changes do not materially affect the substance of the Settlement Agreement.
2. Notice to the Original Class Members shall be provided as ordered by the Court. The Parties anticipate that the Original Class Members will receive such notice directly through first class mail and also by electronic mail using the most recent contact information available.
3. In preparation for the issuance of notice to the Original Class Members, the Parties shall produce to the Settlement Administrator in electronic form the Members' last known mailing addresses, email addresses, and telephone numbers .
4. No later than ten days after the entry of an order granting preliminary approval of this Settlement Agreement, the Settlement Administrator shall issue notice to the Original Class Members in the form and manner approved by the Court. The date on which this notice is sent shall be deemed "the Initial Notice Mailing Date."
5. If a Class Notice is returned as undeliverable with a forwarding address provided by the United States Postal Service, the Claims Administrator will promptly resend the Class Notice to that forwarding address. If a Class Notice is returned as undeliverable and without a forwarding address, the Claims Administrator will perform one skip trace only, and if it obtains a more recent address, will resend the Class Notice. The Claims Administrator shall also mail, and email if applicable, a Class Notice to any Original Class Member who contacts the Claims Administrator or one of the Parties and requests a Class Notice.

I. CAFA Notice.

1. No later than ten calendar days after the filing of Plaintiffs' motion for preliminary approval, and in accordance with 28 U.S.C. § 1715, Knight shall serve notice of the Settlement Agreement on the United States Attorney General and the Washington State Attorney General together with the following materials:

- a. A copy of the complaint and amended complaints and any materials filed with the complaints in the Action;
  - b. Notice of any scheduled judicial hearing in the Action;
  - c. Any proposed or final notification to Original Class Members of:
    - i. The Members' rights to request exclusion from the Action; and
    - ii. A proposed settlement of the Action;
  - d. This Settlement Agreement;
  - e. Any settlement or other agreement contemporaneously made between Class Counsel and counsel for Knight;
  - f. Any proposed final judgment or notice of dismissal;
  - g. The names of the Original Class Members residing in Washington and the estimated proportionate share of the claims of such members to the entire settlement; and
  - h. Any written judicial opinion relating to the materials described under subparagraphs (c) through (f).
2. The noticed federal and state officials shall have no less than 90 calendar days to review, comment, or respond to the Settlement Agreement before the date of the final approval hearing.
  3. Knight shall bear any attorneys' fees or costs associated with providing the notice required by 28 U.S.C. § 1715.
- J. Exclusion from Class.
1. Each Original Class Member who properly submits a timely written request for exclusion shall be excluded from the Settlement Class and shall have no rights under this Settlement Agreement. An exclusion request shall be deemed timely if it is postmarked no later than thirty calendar days after the Initial Notice Mailing Date and received by the Settlement Administrator.

2. An exclusion request must: (i) be in writing; (ii) state the individual's current address; (iii) contain the following statement: "I/we hereby request that I/we be excluded from the proposed settlement class in the case of Helde v. Knight Transportation, Inc."; (iv) be signed; and (v) be mailed to and received by the Settlement Administrator at the address provided in the Class Notice and postmarked within thirty calendar days from the Initial Notice Mailing Date.
3. No later than forty calendar days after the Initial Notice Mailing Date, Knight shall file and serve a declaration from the Settlement Administrator identifying all individuals who have made a timely and valid request for exclusion.
4. Neither Party nor their counsel shall encourage any Original Class Member to opt-out of the Settlement.

K. Objections to the Settlement Agreement.

1. The notice form sent to Original Class Members shall inform them of the right to object to this Settlement Agreement. If a person wishes to have the Court consider such an objection, the person (1) must not exclude himself or herself from the Settlement Class and (2) must mail to the Settlement Administrator a written objection, along with any supporting documentation that the person wishes the Court to consider. The objection must be received by the Settlement Administrator at the address provided in the Class Notice and postmarked within thirty calendar days from the Initial Notice Mailing Date. The Settlement Administrator will submit copies of any such objection to counsel for the Parties within five days of receiving the objection. The Parties shall apprise the Court of any such objections at a formal fairness hearing. If such objection is submitted and overruled by the Court, the objecting member of the Settlement Class shall remain fully bound by the terms of this Settlement Agreement so long as it is granted final approval by the Court.
2. The Parties shall submit any responses to objections no later than forty calendar days after the Initial Notice Mailing Date.
3. Neither Party nor their counsel shall encourage any member of the Settlement Class to file an objection to this Settlement Agreement.



4. Any Settlement Class Member who does not appear individually or through counsel and who does not challenge or comment upon the fairness and adequacy of this Settlement Agreement or Class Counsel's petition for attorneys' fees and costs shall waive and forfeit any and all rights to appear separately or object. All members of the Settlement Class shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments in this Action.

### **III. Release and Liability for Violation or Breach of Agreement.**

As of the Effective Date of this Settlement Agreement, Plaintiffs and each and every member of the Settlement Class, individually and as a Settlement Class, for themselves, their spouses, executors, representatives, heirs, successors, and assigns, in consideration of the relief set forth in the Settlement Agreement, the sufficiency of which is acknowledged, will, to the extent permitted by law, fully and finally release Knight, and its affiliates, subsidiaries, successors and assigns, as well as all present and former Knight members, officers, managers and employees, and their respective spouses, successors and assigns, from any and all past or present claims, debts, demands, causes of action, liabilities, losses, obligations, interest, attorneys' fees, costs, expenses, damages, exemplary damages, and injuries of every kind, nature and description that accrued during the period from April 19, 2009 to November 14, 2016 and that directly or indirectly related to, or arose out of, or stemmed from the subject matter of this Action. The released claims include but are not limited to statutory claims under RCW 49.46.130, RCW 49.46.090, RCW 49.46.010, RCW 49.12.020, RCW 49.48.010, RCW 49.48.030, RCW 49.52.050, RCW 49.52.060, RCW 49.52.070, RCW 19.86.010-.920, WAC 296-128-010, WAC 296-128-012, WAC 296-126-011, WAC 296-126-040, WAC 296-126-025, WAC 296-126-023, and WAC 296-126-030. Notwithstanding its broad nature, nothing in this Release shall preclude Class Counsel from filing a motion to recover reasonable attorneys' fees and costs.

### **IV. Preliminary and Final Approval Procedures.**

A. No later than fourteen calendar days after the execution of this Settlement Agreement, Class Counsel shall file a motion with the Court for a preliminary order approving the Settlement Agreement.

B. The final approval hearing will be held on such date as the Court, in its discretion, may order.

C. No later than twenty-one calendar days after entry of the order granting preliminary approval, Class Counsel shall file a motion requesting that the Court grant final approval of the Settlement Agreement and enter final judgment as to Knight in the Action.

D. In the event the Settlement Agreement is not given final approval in all material respects and as set forth in this Settlement Agreement, or the Court's final approval order is reversed on appeal, the Settlement Agreement shall become null and void.

**V. Final Approval Order.**

The Parties shall use their best efforts to secure the Court's issuance of a Final Approval Order consistent with this Agreement and prevailing Court Rules and laws in effect. The Final Approval Order shall, among other things:

A. Find that the Court has personal jurisdiction over the Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement Agreement;

B. Approve the Settlement Agreement as fair, adequate and reasonable, and consistent and in compliance with the applicable provisions of the law and direct the Parties and their counsel to implement and consummate this Settlement Agreement according to its terms and provisions;

C. Find that notice substantially in the form of Exhibit B and the notice procedure implemented pursuant to this Agreement: (i) constitute the best practicable notice; (ii) constitute notice that is reasonably calculated, under the circumstances, to inform Class Members of their right to object to the proposed Settlement Agreement and to appear at the Final Approval Hearing; (iii) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of the Federal Rules of Civil Procedure.

D. Dismiss the Action on the merits and with prejudice with respect to Knight, and awarding attorneys' fees and litigation costs to Class Counsel pursuant either to an agreement by the Parties or after consideration of the Parties' briefs and arguments relating to a motion by Plaintiffs for fees and costs;

E. Incorporate the Release set forth in Section III;

F. Without affecting the finality of the Final Approval Order and Judgment for the purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Settlement Agreement and the Final Approval Order, and for any other necessary purpose; and

G. Incorporate any other provisions as the Court deems necessary and just.

**VI. Miscellaneous Provisions.**

A. No Admission of Wrongdoing. The Parties hereto acknowledge that the execution of this Settlement Agreement and the consummation of the transactions contemplated herein do not constitute any admission of liability by Knight under state or federal law, whether or not such claims have been pled in the instant action.

B. Dismissal. In connection with the issuance of an order granting final approval of this Settlement Agreement, the Parties shall present the Court with a final order of dismissal with prejudice as to the Knight and request immediate entry of that order.

C. Continuing Jurisdiction. The United States District Court for the Western District of Washington at Seattle shall have continuing jurisdiction over this Action for the purpose of implementing this Settlement Agreement and all related matters, including preliminary approval of the Settlement Agreement, final approval of the Settlement Agreement, entry of final judgment as to Knight, and any post-judgment issues.

D. Reasonable Best Efforts. The Parties agree to undertake their reasonable best efforts, including, without limitation, all efforts contemplated herein, to carry out the terms of this Settlement Agreement. In addition to the documents and other matters specifically referenced in the Settlement Agreement, the Parties agree to execute and/or deliver, or cause to be executed and/or delivered, such other documents and/or other materials necessary to carry out the terms and conditions of this Settlement Agreement, as may be reasonably necessary to effect the obligations contemplated by the Settlement Agreement.

E. Amendments/Modifications. Subject to any power of the Court to order a modification, this Settlement Agreement may be amended or modified only by a written instrument signed by each of the Parties and their respective counsel of record. Amendment and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

F. Construction. The terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties. This Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Settlement Agreement.

G. Counterparts. This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

H. Tax Consequences: No opinions concerning the tax consequences of the proposed settlement to individual Original Class Members are given by Knight, Plaintiffs, or Class Counsel, nor are any representations in this regard made by virtue of this Settlement Agreement. Each Settlement Class Member's tax obligations, if any, and the determination thereof, is the sole responsibility of the Class Member, and the tax consequences, if any, depend on the particular circumstances of each individual Settlement Class Member.

I. Governing Law: This Settlement Agreement shall be governed by, and interpreted according to, the law of the State of Washington without regard to its choice of law provisions.

J. Parties Bound: This Settlement Agreement shall be binding upon and inure to the benefit of Plaintiffs, the Class, and Knight, and the respective heirs, successors and assigns of each of the foregoing.

K. No Evidence: In no event shall this Settlement Agreement, any of its provisions, or any negotiations, statements, or proceedings relating to it in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this Settlement Agreement or the relief provided therein. Further, neither this Settlement Agreement nor any related negotiations, statements, or proceedings shall be construed as, offered as, used as, or deemed to be evidence or an admission or concession by any person of any matter, including but not limited to any liability or wrongdoing on the part of Knight or as a waiver by it of any applicable defense.

L. Waiver: The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior or subsequent to, or contemporaneous with, this Settlement Agreement.

M. Entire Agreement: This Settlement Agreement constitutes the entire agreement of the Parties and supersedes any previous agreements, whether written or oral.



THE PARTIES HEREBY AGREE TO THE ABOVE SETTLEMENT AGREEMENT BY THE FOLLOWING SIGNATURES:

DATED: March \_\_, 2017

KNIGHT TRANSPORTATION, INC.

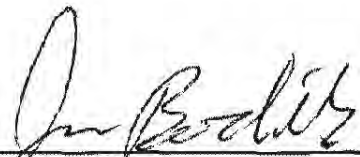
By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: March \_\_, 2017

\_\_\_\_\_  
KEVIN HELDE  
Plaintiff and Class Representative

DATED: March 31, 2017

  
\_\_\_\_\_  
JON BODILY  
Plaintiff and Class Representative

DATED: March \_\_, 2017

\_\_\_\_\_  
MAX TENA  
Plaintiff and Class Representative

Approved as to form:

DATED: April 3, 2017

TERRELL MARSHALL LAW GROUP PLLC

By:   
\_\_\_\_\_  
TOBY J. MARSHALL  
Counsel for Plaintiffs

DATED: April 28 2017

REKHI & WOLK, P.S.

By:   
\_\_\_\_\_  
HARDEEP REKHI  
Counsel for Plaintiffs

DATED: April \_\_, 2017

DLA PIPER LLP (US)

By: \_\_\_\_\_  
ANTHONY TODARO  
ERIC S. BEANE  
Counsel for Defendant

Approved as to form:

DATED: April 3, 2017

TERRELL MARSHALL LAW GROUP PLLC

By:   
\_\_\_\_\_  
TOBY J. MARSHALL  
Counsel for Plaintiffs

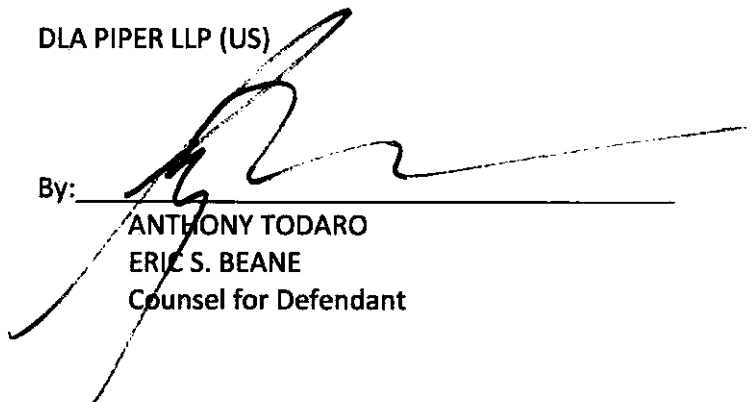
DATED: April     , 2017

REKHI & WOLK, P.S.

By: \_\_\_\_\_  
HARDEEP REKHI  
Counsel for Plaintiffs

DATED:  April     , 2017

DLA PIPER LLP (US)

By:   
\_\_\_\_\_  
ANTHONY TODARO  
ERIC S. BEANE  
Counsel for Defendant