

## FINAL SETTLEMENT AGREEMENT

*McCracken et al. v. Garvey Schubert et al.* (Multnomah Co. Case No. 15CV33224)

1. The parties to this Agreement are:
  - 1.1. Kyle McCracken and Guy Oakes, in their personal capacity as representatives of the classes of Washington and Oregon drivers and couriers (the “Classes”) certified in *Kyle McCracken et al v. Pacific Cargo Services, LLC et al*, Superior Court for the State of Washington for King County Case No. 11-2-27357-1 SEA (“Washington Case”), (collectively “ Plaintiffs”);
  - 1.2. Garvey Schubert Barer, a partnership of professional corporations, and related entities including Garvey Schubert Barer, P.C., an Oregon professional corporation, (collectively “GSB”);
  - 1.3. Nancy Cooper (“Cooper”); and
  - 1.4. James Holman (“Holman”).

### 2. The Dispute

The Classes in the Washington Case were composed of drivers and couriers of Pacific Cargo Services, LLC, Pacific Cargo Services-Washington, LLC, Pacific Courier Services, LLC, Pacific Courier Services-Washington, LLC, ITG Washington LLC, and Integrity Transportation Group, LLC (collectively “the PCS Entities”). Individually and on behalf of the Classes, Plaintiffs filed the Washington Case against Holman and the PCS Entities alleging, among other things, an unlawful pay practice whereby the PCS Entities and James Holman paid a flat rate for each shift worked by a member of the Classes but failed to pay additional compensation when a member worked in excess of 40 hours in a workweek” (“Flat Rate Pay Practice”).

- 2.1. On or about January 3, 2013, the Class Members entered into a settlement agreement with Holman and the PCS Entities (the “Washington Settlement Agreement”). In the Washington Settlement Agreement, Holman and the PCS Entities assigned to the Class Members “any and all claims for malpractice that the PCS Entities and James Holman could have asserted individually or collectively against Cooper and GSB over any advice or other professional services provided to the PCS Entities and James Holman in regard to their wage and hour practices, including but not limited to their Flat Rate Pay Practice” (“the Malpractice Claims”).
- 2.2. On January 28, 2013, after the parties to the Action entered into and executed the Settlement, the PCS Entities filed for bankruptcy under Chapter 11 (the “Bankruptcy”). On August 27, 2013, after the Bankruptcy was converted from Chapter 11 to Chapter 7, the Bankruptcy trustee filed an adversary proceeding against Plaintiffs asking the Bankruptcy court to void the PCS Entities’

assignment of the Malpractice Claims to Plaintiffs.

- 2.3. Plaintiffs filed a complaint on September 17, 2013 to pursue the Malpractice Claims that the PCS Entities and James Holman had assigned to Plaintiffs. The Plaintiffs' Oregon lawsuit, Case No. 130913143, was abated by stipulation and agreement of the parties pending the outcome and appeal of the trustee's adversary proceeding. On February 19, 2015, the Bankruptcy Appellate Panel for the Ninth Circuit affirmed the bankruptcy court's decision in the trustee's adversary proceeding voiding the PCS Entities' assignment of the Malpractice Claims to Plaintiffs. Plaintiffs did not seek further review. On June 26, 2015, Case No. 130913143, was dismissed without prejudice.
- 2.4. On or about December 10, 2015, within 180 days of dismissal so that their claims related back to the date of filing Case No. 130913143 under ORS 12.220, Plaintiffs filed a Complaint against GSB and Cooper (collectively "Defendants") in the Circuit Court of the State of Oregon for the County of Multnomah, Case No. 15CV33224 ("the Malpractice Action"), asserting the Malpractice Claims assigned to them by Holman.
- 2.5. The parties to this Agreement desire to resolve all disputes with Defendants in the Malpractice Action. This Agreement and the payments made hereunder are made in compromise of doubtful and disputed claims and are not admissions of any liability of any kind, which is expressly denied by Defendants.

### 3. Payment and Release

- 3.1. Plaintiffs shall obtain an order from the Court in the Washington Case that approves the terms of this Final Settlement Agreement ("Final Approval Order"). In the event Plaintiffs are unable to obtain a Final Approval Order, this Agreement will be null and void.
- 3.2. After the date for appeal or objection by any person or entity in the Washington Case ("Finalization Date") has passed, Defendants shall, within fourteen (14) days, cause the amount of \$475,000.00 ("Settlement Proceeds") to be paid to an account to be identified by Plaintiffs.
- 3.3. Upon receipt of the Settlement Proceeds, Plaintiffs and Defendants in the Malpractice Action shall execute and file a Stipulated General Judgment of Dismissal with prejudice and without costs.
- 3.4. Each party is to bear its own expenses and fees. Plaintiffs will apply to the King County Court for an award of fees and costs to be paid out of the Settlement Proceeds.
- 3.5. In consideration of the covenants, releases and payments hereunder, Plaintiffs and Holman, on behalf of themselves, their assigns, heirs, administrators, executors, successors and all members of both the Washington and Oregon Classes in the Washington Case, hereby release and forever discharge

Defendants, each of their present and former parents, affiliates and subsidiaries and each present and former partner, attorney, director, officer, employee, insurer, or any other agent of any of the foregoing entities, or any other party who could be deemed responsible or liable for the claims discussed herein, of and from any and all claims and causes of action whatsoever that Plaintiffs or Holman have or may have, which arose from or arise by reason of Defendants' acts or omissions in acting as attorneys for the PCS Entities and/or Holman or for any of the former affiliates of the PCS Entities and/or Holman.

3.6. This release is intended to be as broad and comprehensive as possible, and is intended to include the release of claims or rights otherwise described above that are obtained by assignment or operation of law, as well as the release of unknown and unsuspected claims.

3.7. This release is not intended to include the release of any rights or duties arising out of this Agreement. The parties to this Agreement further covenant and agree not to file any claim, action or proceeding against Defendants based on the claims released in this Agreement.

#### 4. Integration and Modification

4.1 This is a fully integrated agreement. All terms of the settlement between the parties to this Agreement are contained in this Agreement. This Agreement replaces, eliminates, and supersedes all previous and contemporaneous oral and written discussions, statements, and agreements. There are no separate oral, written, or collateral agreements.

4.2 This Agreement may not be amended except in a written instrument signed by the parties to this Agreement. The terms of this Agreement are contractual, not mere recitals.

5. Warranty: The parties to this Agreement represent and warrant that in executing this Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their independently selected counsel, concerning the nature, extent and duration of the rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof, and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements or omissions pertaining to any of the foregoing matters by any party or by any person representing any party to this Agreement.

6. Authority to Extinguish Claims: Plaintiffs warrant and represent (a) no other person or entity has any interest in the claims, demands, obligations, or causes of action referred to in this Agreement except as otherwise set forth herein, (b) they have the sole right and exclusive authority to execute this Agreement on behalf of all class members in the Washington Case, and (c) the execution, delivery and performance of this Agreement does not contravene or violate the terms of any other agreement, contract or plan to which Plaintiffs are a party or by which they are bound.

7. **Governing Law:** This Agreement is governed by Oregon law without regard to Oregon's conflict of law principles.
8. **Headings:** Section headings are for convenience only and shall not be construed to change or affect the text of this Agreement.
9. **Binding Effect:** This Agreement binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors, and successors.
10. **Waiver:** No portion of this Agreement may be waived except by written instrument signed on behalf of the party whom the waived provision is designed to benefit. A waiver of one provision is not a waiver of any other. Failure to enforce any provision of this Agreement shall not waive that provision or any other.
11. **Construction:** The rule of construction that ambiguities in a writing should be construed against the drafter does not apply to this Agreement, which has been negotiated and drafted by counsel for all parties.
12. **Multiple Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement.
13. **Declaration:** By signing this Agreement, the parties to this Agreement, and each of them, acknowledge and declare: (a) that they have fully and carefully read this Agreement; (b) that they clearly understand that this Agreement is a complete and final settlement; (c) that they clearly understand the meaning, purpose, and intent of each provision of this Agreement, and that each provision is clear and definite; (d) that they have not relied upon any representation of another party in agreeing to the terms of this Agreement; and (e) that they have been represented by competent legal counsel with respect to negotiating, explaining, and entering into this Agreement.

///

///

///

14. Dispute Resolution for Settlement: All disputes arising from this Terms of Settlement or Final Settlement Agreement shall be overseen and decided by Judge Susan Leeson.

DATED this \_\_\_\_ day of March, 2017.

---

Eric Lindenauer  
Office Managing Director for GSB

---

Nancy Cooper

---

James Holman

---

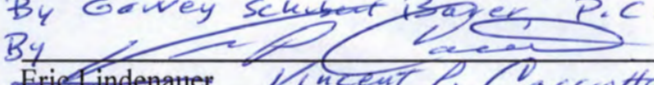
Kyle McCracken  
Individually and as Class Representative

---

Guy Oakes  
Individually and as Class Representative

14. Dispute Resolution for Settlement: All disputes arising from this Terms of Settlement or Final Settlement Agreement shall be overseen and decided by Judge Susan Leeson.

DATED this 9<sup>th</sup> day of March, 2017.

*Garvey Schubert Barer, a partnership of professional corporations*  
By *Garvey Schubert Barer, P.C.*  
By   
~~Eric Lindenauer~~ *Vincent P. Cacciatoli*  
~~Office Managing Director for GSB~~ *Secretary/Treasurer*

\_\_\_\_\_  
Nancy Cooper

\_\_\_\_\_  
James Holman

\_\_\_\_\_  
Kyle McCracken  
Individually and as Class Representative

\_\_\_\_\_  
Guy Oakes  
Individually and as Class Representative

14. Dispute Resolution for Settlement: All disputes arising from this Terms of Settlement or Final Settlement Agreement shall be overseen and decided by Judge Susan Leeson.

DATED this 9<sup>th</sup> day of March, 2017.

---

Eric Lindenauer  
Office Managing Director for GSB

  
Nancy Cooper

---

James Holman

---

Kyle McCracken  
Individually and as Class Representative

---

Guy Oakes  
Individually and as Class Representative

14. Dispute Resolution for Settlement: All disputes arising from this Terms of Settlement or Final Settlement Agreement shall be overseen and decided by Judge Susan Leeson.

DATED this 16 day of March, 2017.

---

Eric Lindenauer  
Office Managing Director for GSB

---

Nancy Cooper



---

James Hollman

---

Kyle McCracken  
Individually and as Class Representative

---

Guy Oakes  
Individually and as Class Representative



14. Dispute Resolution for Settlement: All disputes arising from this Terms of Settlement or Final Settlement Agreement shall be overseen and decided by Judge Susan Leeson.

DATED this 15 day of March, 2017.

---

Eric Lindenauer  
Office Managing Director for GSB

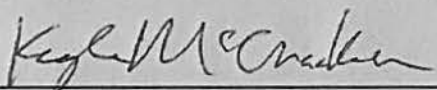
---

Nancy Cooper

---

James Holman

---

  
Kyle McCracken  
Individually and as Class Representative

---

Guy Oakes  
Individually and as Class Representative

14. Dispute Resolution for Settlement: All disputes arising from this Terms of Settlement or Final Settlement Agreement shall be overseen and decided by Judge Susan Leeson.

DATED this 11<sup>th</sup> day of March, 2017.

---

Eric Lindenauer  
Office Managing Director for GSB

---

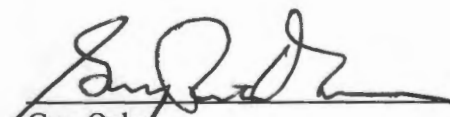
Nancy Cooper

---

James Holman

---

Kyle McCracken  
Individually and as Class Representative



---

Guy Oakes  
Individually and as Class Representative