

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

<p>DIANNA ESTES, on behalf of herself and all those similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>P.A.M. TRANSPORT, INC.</p> <p style="text-align: center;">and</p> <p>JOHN DOES 1-10,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 5:13-cv-05199</p>
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JOINT STIPULATION OF SETTLEMENT AND RELEASE

1. PREAMBLE

1.1 This Settlement Agreement and Release is made and entered into as of the dates set forth below between P.A.M. Transport, Inc. (“P.A.M.”) and the Named Plaintiff, individually and on behalf of the Settlement Class, all as further defined below.

2. DEFINITIONS

- 2.1 The term “*Agreement*” means this Joint Stipulation of Settlement and Release.
- 2.2 The term “*Approved Claimants*” means those Rule 23 Class Claimants and FLSA Collective Action Claimants for whom the Claims Administrator has approved payment of monies under this Agreement.
- 2.3 The term “*Approved Claims*” means those Claims which are approved by the Claims Administrator for payment.
- 2.4 The term “*Attorneys’ Fees and Costs*” means the amount of attorneys’ fees and costs and expenses to be requested by Class Counsel subject to Court approval in accordance with Subsection 5.5 of this Agreement.

- 2.5 The term “**Claim**” means the amount of monies the Claims Administrator determines is due each Rule 23 Class Claimant and FLSA Collective Action Claimant under this Agreement.
- 2.6 The term “**Claim Check**” means the check sent to each Settlement Class Member by the Claims Administrator pursuant to the terms of this Agreement.
- 2.7 The term “**Claims Administrator**” means Kurtzman Carson Consultants (“KCC”), or such other claims administrator as may be mutually agreeable to the Parties, who will perform the duties of, among other things: (i) mailing the Notice Forms to Class Members; (ii) tracking returned Opt-Out Letters and objections; (iii) notifying the Parties with regard to Opt-Out Letters, objections, and proposed payments consistent with this Agreement; (iv) issuing Claim Checks and tracking un-cashed checks; (v) canceling expired Claim Checks; and (iv) issuing any required tax paperwork.
- 2.8 The term “**Class Counsel**” means the following counsel who appeared on behalf of Plaintiff: Swartz Swidler, LLC.
- 2.9 The term “**Class List**” means the list of persons included within the Settlement Class, their employment dates, and last known addresses, which shall be provided by P.A.M. to the Claims Administrator and Class Counsel to facilitate this Settlement and the claims administration.
- 2.10 The term “**Court**” means the District Court and any appellate court that may review any orders entered by the District Court related to this Settlement.
- 2.11 The term “**District Court**” means the United States District Court for the Western District of Arkansas, Fayetteville Division.
- 2.12 The term “**Execution**” refers to the signing of this Agreement by all signatories hereto.
- 2.13 The term “**Final Judgment**” refers to the Final Judgment approving the Settlement, releasing all claims, and dismissing the Litigation with prejudice, which this Settlement contemplates will be entered and approved by the District Court.
- 2.14 The term “**FLSA**” means the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, as amended.
- 2.15 The term “**FLSA Collective Action Claimant**” means each Settlement Class Member who worked for P.A.M. as an over the road truck driver during the Settlement Class Period who has filed in the District Court a Consent Form to join the FLSA collective action by no later than the date Plaintiffs file a motion for preliminary approval of the Settlement of the Litigation and who does not opt out of the settlement.
- 2.16 The term “**Litigation**” means the action filed in the District Court styled, *Estes v. P.A.M. Transport, Inc.*, Case No. 5:13-CV-05199.

- 2.17 The term “**Maximum Settlement Amount**” means the combined total of (1) any Attorneys’ Fees and Costs approved by the Court, plus (2) any Service Award approved by the Court to the Settlement Class Representative or to opt-in plaintiffs who gave depositions, plus (3) the Notice and Administration Costs, plus (4) all amounts paid under this Agreement to both Rule 23 Class Claimants and FLSA Collective Action Claimants, plus (5) any employer side taxes associated with the Settlement. The Maximum Settlement Amount shall equal Three Million Four Hundred and Fifty Thousand Dollars (\$3,450,000.00).
- 2.18 The term “**Named Plaintiff**” means the named plaintiff in the Litigation, i.e., Dianna Estes. Named Plaintiff has already been appointed as Representative of the conditionally certified FLSA Collective Action Claimants. Class Counsel shall seek her further appointment as Representative for the Rule 23 Class Claimants.
- 2.19 The term “**Net Settlement Fund**” means the Maximum Settlement Amount minus the combined aggregate of (1) the Attorneys’ Fees and Costs approved by the Court, (2) any Service Award approved by the Court to the Settlement Class Representative or to opt-in plaintiffs who gave depositions, (3) Notice and Administration Costs; and (4) any employer side taxes associated with the Settlement.
- 2.20 The term “**Notice**” means the document substantially in the form of the Notice attached hereto as Exhibit 1, which has been agreed to by the Parties and which, subject to District Court approval, the Claims Administrator will mail to the Settlement Class Members, as soon as practicable after preliminary approval of the Settlement Agreement, explaining the terms of the Settlement and the opt-out and objection processes.
- 2.21 The term “**Notice and Administration Costs**” or “**Administration Costs**” means the cost to compare the class list against the National Change of Address database maintained by the United States Postal Service, typeset, print, and mail the Notice, perform agreed upon skip-tracing of returned mailings, payment of postage required to comply with this Agreement, the costs to distribute Settlement funds, the cost to provide tax documentation, the fees to be paid to the Claims Administrator, and all other expenses contemplated under this Agreement which are necessary to administer the Settlement in accordance with this Agreement.
- 2.22 The term “**Notice Period**” means the time period during which Settlement Class Members will receive the notice of this Settlement as contemplated by this Agreement and have to take action thereunder. Except as otherwise specifically set forth in this Agreement, the Notice Period shall be ninety (90) days with such period commencing upon mailing of the Notice by the Settlement Claims Administrator following the Court’s preliminary approval of the Settlement.
- 2.23 The term “**Opt-Out Letter**” refers to a written request to opt-out or exclude oneself from the Settlement sent by any Settlement Class Member who elects to be excluded from the Settlement Class. A Settlement Class Member must submit an Opt-Out Letter to exclude himself or herself from the Settlement and from the release of claims pursuant to this

Settlement. Those who submit a valid and timely Opt-Out Letter will no longer be considered part of the Settlement Class after their valid and timely Opt-Out Letter is received by the Claims Administrator.

- 2.24 The term “**Parties**” means the Named Plaintiff, the Settlement Class, and P.A.M.
- 2.25 The term “**Released Claims**” means the claims, rights, penalties, demands, damages, debts, accounts, duties, costs (other than those costs required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, or liabilities that are released, acquitted and discharged pursuant to Section 8 of this Agreement.
- 2.26 The term “**Releasees**” means P.A.M. and any of its current or former subsidiaries, direct or indirect parent entities, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, and those plans’ respective trustees, administrators, and fiduciaries.
- 2.27 The term “**Releasing Settlement Class Members**” means Named Plaintiff, who is the Settlement Class Representative, on her own behalf and on behalf of all the Settlement Class Members, and all Settlement Class Members, other than those who submit timely and valid Opt-Out Letters.
- 2.28 The term “**Rule 23 Class Claimant**” means each Settlement Class Member who worked for P.A.M. as an over the road truck driver during the Settlement Class Period but who has not filed a Consent Form to join the FLSA collective action by the date Plaintiffs file a motion for preliminary approval of the Settlement of the Litigation and who does not opt out of the settlement.
- 2.29 The term “**Settlement**” means the compromise and settlement of the Litigation as contemplated by this Agreement.
- 2.30 The term “**Settlement Class**” means a class comprised of the FLSA Collective Action Claimants and the Rule 23 Class Claimants to be certified for settlement purposes only in accordance with this Agreement.
- 2.31 The term “**Settlement Class Member**” means any member of the Settlement Class and includes the FLSA Collective Action Claimants and the Rule 23 Class Claimants.
- 2.32 The term “**Settlement Class Period**” means the period of time from August 22, 2010, up through and including December 5, 2013, which is the period of time applicable to the claims being released pursuant to Section 8 hereafter.
- 2.33 The term “**Settlement Class Representative**” means Dianna Estes, the Named Plaintiff in this action, who was previously appointed as the Representative of the Settlement Class Members in the Court’s Order conditionally certifying the matter as a collective action,

and who Class Counsel will request to be appointed by the Court as the Representative of the Settlement Class Members in this Settlement.

2.34 The term “***Settlement Effective Date***” as used herein means the first day following the last of the following occurrences:

2.34.1 The date the time to appeal or seek permission to appeal or seek other judicial review of the entry of the Final Judgment approving the Settlement has expired with no appeal or other judicial review having been taken or sought; or

2.34.2 If an appeal or other judicial review has been taken or sought: (i) the date the Final Judgment is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review therefrom; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the District Court or to a lower appellate court following an appeal or other review, the date the Final Judgment is entered by the District Court after remand and the time to appeal or seek permission to appeal or seek other judicial review of the entry of that Final Judgment has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Subsection shall apply.

2.35 The term “***P.A.M.***” means named defendant P.A.M. Transport, Inc.

3. RECITALS

3.1 On August 22, 2013, plaintiff Dianna Estes filed suit in the United States District Court for the Eastern District of Arkansas. On September 19, 2013, venue was transferred to the United States District Court for the Western District of Arkansas, Fayetteville Division. Plaintiff’s Complaint alleged claims for failure to pay minimum wage for all hours worked under the FLSA and similar Wage and Hour laws of Arkansas. Specifically, Plaintiff alleged FLSA claims on her own behalf and as a collective action on behalf of all over the road truck drivers who worked for P.A.M. during the three years before suit was filed. Plaintiff also alleged virtually identical claims under the Arkansas Wage and Hour statutes on her own behalf and, under Federal Rules of Civil Procedure Rule 23, as a class action on behalf of all truck drivers who worked for P.A.M. from August 22, 2010 to the filing of the lawsuit. P.A.M. filed a timely Answer denying all of the material allegations in Plaintiff’s Complaint and asserting affirmative defenses.

3.2 By Order entered November 25, 2013, as amended, and pursuant to the agreement of the Parties, the Court conditionally certified this matter as a collective action under the FLSA. In January of 2014, Court-approved Notification and Consent To Join Suit forms were sent to all potential class members who were employed by and received wages from P.A.M. as over the road truck drivers from August 22, 2010 through December 5, 2013. Subject to verification against P.A.M.’s employment records, as of March 31, 2015, two thousand

seven hundred and three (2703) of the nine thousand six hundred and three (9603) potential class members had filed consent forms and thereby opted into the FLSA Collective Action.

- 3.3 The Parties actively engaged in discovery and case preparation over the next year. On January 6, 2015, the Parties participated in a private mediation with Mr. Hunter Hughes, from Atlanta, Georgia, a highly experienced mediator with expertise in Wage and Hour issues. Though a resolution was not reached that day, the Parties continued negotiations and ultimately reached a proposed class wide Settlement, subject to Court approval. This Settlement was arrived at in good faith during a genuine arms-length mediation and follow up negotiations.
- 3.4 Named Plaintiff, the Settlement Class Representative, the Settlement Class Members, and Class Counsel believe this Litigation is meritorious based on applicable law or an extension thereof. Class Counsel represent that they have conducted a thorough investigation into the facts of this case and have diligently pursued an investigation of the Named Plaintiff's and the Settlement Class Members' claims against P.A.M., including, but not limited to: (i) conducting numerous depositions of P.A.M. representatives in Fayetteville, Arkansas; (ii) researching and preparing to draft a motion for class certification; (iii) overseeing dissemination of Collective Action notice and opt-in process; (iv) interviewing potential Class Members and analyzing the results of Settlement Class Member interviews; (v) reviewing thousands of pages of relevant documents; (vi) researching applicable and analogous law and potential defenses; (vii) reviewing and analyzing payroll and related compensation data provided by P.A.M. for more than 1,500 drivers; (viii) hiring and consulting with experts; and (ix) defending the depositions of the representative plaintiff and fifteen (15) opt-in plaintiffs. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by P.A.M., trial risk, and appellate risk.
- 3.5 P.A.M. has also actively investigated the facts surrounding Plaintiff's and the Settlement Class' claims and has actively defended itself, including, but not limited to: (i) reviewing voluminous documents for production to plaintiff; (ii) interviewing fact witnesses; (iii) conducting depositions; (iv) hiring and consulting with experts; (v) researching, evaluating, and drafting a response to plaintiff's motion for class certification and motion to decertify the collective action; and (vi) researching and evaluating arguments to prepare a motion for summary judgment. P.A.M. denies any liability or wrongdoing of any kind associated with the claims alleged. P.A.M. further asserts that it has complied with all applicable provisions of federal and Arkansas statutory and common law and had a good faith belief based on existing law that its practices were in compliance. Although it believes it has meritorious defenses to the claims, P.A.M. has determined to fund this Settlement in light of the unpredictability of litigation and of the significant distraction to P.A.M.'s basic business required in sustaining a long term litigation defense.
- 3.6 The Parties have stipulated to certification of a FLSA Opt-In Class and a Rule 23 Opt-Out Class solely for purposes of settling this case and will request that the court certify such

settlement only classes pursuant to this Settlement. For Settlement purposes only, the Parties stipulate and agree that the requisites for establishing class certification with respect to the Settlement Class have been met and are met. P.A.M. denies that, for purposes other than effectuating settlement, this Litigation is appropriate for class or representative treatment.

- 3.7 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to or which could have been alleged in Plaintiff's Complaint. The entry of Final Judgment in this Litigation shall release and dismiss with prejudice all Wage and Hour claims, including those claims which were raised in any Complaint filed or which could have been raised in the Litigation, with the exception of any claims which might be retained by Settlement Class Members who validly exclude themselves from the Settlement, with respect to whom P.A.M. shall retain any existing defenses to such excluded claims. The Parties agree to cooperate and to use their best efforts in good faith to take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to effectuate its terms, and to dismiss this Litigation with prejudice.

4. CERTIFICATION OF SETTLEMENT CLASS

- 4.1 The Settlement Class shall consist of all FLSA Collective Action Claimants and Rule 23 Class Claimants who were employed by and received wages from P.A.M. as over the road truck drivers during the Settlement Class Period.
- 4.2 In order to implement the Settlement, the Parties or Class Counsel shall request that the District Court grant collective and class certification *for settlement purposes only* in the Litigation to cover the Settlement Class Period, the Settlement Class, and all Claims and individuals covered by this Settlement.
- 4.3 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the District Court does not grant final approval of the Settlement, or if final approval is not given following the appeal of any order by the District Court, or if for any reason the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, each Party shall retain all of their respective rights and shall be returned to their relative legal positions as they existed prior to execution of this Agreement, and neither this Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Agreement, shall be admissible or used for any purpose in this Litigation.
- 4.4 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class for settlement purposes only is in no way an admission and shall not be used as evidence of an admission by P.A.M. that class certification or collective action treatment is proper in the Litigation, or any other litigation, against P.A.M.

5. TERMS OF SETTLEMENT

- 5.1 Subject to the other terms and conditions of this Agreement, and in consideration of the releases and dismissals set forth in this Agreement, and subject to Court approval, P.A.M. agrees to a Maximum Settlement Amount not to exceed Three Million Four Hundred and Fifty Thousand Dollars (\$3,450,000.00). The Net Settlement Fund is the remaining amount of the Maximum Settlement Amount after deducting the Claims Administrator's fees and costs, the court-awarded Attorneys' Fees and Costs, any Service Award to Named Plaintiff, and any employer side taxes associated with the Settlement. The Net Settlement Fund shall be used to pay Settlement Class Members.
- 5.2 Half of the Net Settlement Fund (50%) shall be allocated to pay Settlement Class Members who are FLSA Collective Action Claimants. All FLSA Collective Action Claimants shall be entitled, without the need of taking any further affirmative action, to recover a portion of the 50% Net Settlement Fund which is allocated to FLSA Collective Action Claimants. Each FLSA Collective Action Claimant will receive \$50 (fifty dollars) plus an additional percentage of the remaining Net Settlement Amount allocated to FLSA Collective Action Claimants based on the number of workweeks he or she was employed by P.A.M. during the Settlement Class Period. The additional percentage amounts provided to FLSA Collective Action Claimants will be calculated to provide that the entire 50% Net Settlement Fund (no more, no less) is distributed to FLSA Collective Action Claimants on a pro rata basis, using the assumption that each such claimant receives and cashes his or her Claim Check.
- 5.3 Half of the Net Settlement Fund (50%) shall be allocated to pay Settlement Class Members who are Rule 23 Class Claimants. All Rule 23 Class Claimants shall be entitled, without the need of taking any further affirmative action, to recover a portion of the 50% Net Settlement Fund which is allocated to Rule 23 Class Claimants. Each Rule 23 Class Claimant will receive \$35 (thirty-five dollars) plus an additional percentage of the remaining Net Settlement Amount allocated to Rule 23 Class Claimants based on the number of workweeks he or she was employed by P.A.M. during the Settlement Class Period. The additional percentage amounts provided to Rule 23 Class Claimants will be calculated to provide that the entire 50% Net Settlement Fund (no more, no less) is distributed to the Rule 23 Class Claimants on a pro rata basis, using the assumption that each such claimant receives and cashes his or her Claim Check.
- 5.4 All Settlement Class Members who do not submit a valid and timely Opt-Out Letter to opt-out of this Settlement shall release any and all Released Claims, as described in more detail in Section 8 of this Settlement Agreement.
- 5.5 Class Counsel may seek up to one-third (33.33%) of the Maximum Settlement Amount, meaning up to \$1,150,000.00, as attorneys' fees for their efforts in litigating this matter and as reimbursement for their out-of-pocket litigation costs. . The Settlement is not conditioned upon the Court's approval of Class Counsels' petition for fees and costs, and any amount not approved for attorneys' fees or costs shall remain in the Maximum Settlement Amount. Class Counsel shall also apply for a ten thousand dollar (\$10,000.00)

Service Award for Named Plaintiff and Settlement Class Representative, Dianne Estes, for her service to the Settlement Class Members, and Dianne Estes will provide a general release. Class Counsel shall also apply, on behalf of each opt-in plaintiff who appeared and sat for a deposition, for service awards of three hundred dollars (\$300.00) each (totaling \$4,500.00).

- 5.5.1 The Parties agree that the Court's approval or denial of any request for Attorneys' Fees and Costs or Service Awards are not conditions to this Agreement, and are to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement. Any order or proceeding relating to the application by Class Counsel of an award for Attorneys' Fees and Costs or for Settlement Class Representative Service Awards shall not operate to terminate or cancel this Agreement.
- 5.5.2 Class Counsel agree that they are responsible for allocating the Attorneys' Fees and Costs approved by the Court amongst themselves and any other counsel that may have any other agreement with them. If a lien is asserted, P.A.M. will tender the Attorneys' Fees and Cost award to the District Court and shall thereafter be released from any claim related to those payments. Class Counsel warrant and represent that there are no liens on the amounts to be paid pursuant to the terms of this Agreement and that no assignments of the claims to be released or the Attorneys' Fees and Costs to be paid pursuant to this Agreement have been made or attempted. Class Counsel agree to defend and indemnify P.A.M. and hold P.A.M. harmless from any liability resulting from a breach of these representations and / or any lien or assignment.
- 5.6. P.A.M. shall pay reasonable Notice and Administration Costs to the Claims Administrator, to be determined as follows:
 - 5.6.1 Class Counsel shall obtain an estimate from the Claims Administrator as to the estimated Notice and Administration Costs. P.A.M. agrees to pay the Claims Administrator's cost and fees as they become due. Within thirty (30) days after the Court's order which grants final approval of the Settlement becomes final and non-appealable, P.A.M. will wire the Claims Administrator the remaining Maximum Settlement Amount. The Claims Administrator shall set up a Qualified Settlement Fund account for the purpose of receiving the wire and issuing payments pursuant to this Agreement. Any interest accruing on the account shall be paid to P.A.M.
 - 5.6.2 The Notice and Administration Costs shall be counted against the Maximum Settlement Amount. In the event the Settlement Effective Date does not occur, any portion of the Notice and Administration Costs already incurred by the Claims Administrator shall be paid by P.A.M. regardless of the outcome of the Settlement.
- 5.7 Approved payments to Settlement Class Members, Attorneys' Fees and Costs, and any Service Awards will be paid by the Claims Administrator within the time frame set forth in Section 7.6.

- 5.8 The Claim Administrator shall regularly and accurately report to the Parties, in written form when requested, on the substance of the work performed. Any dispute relating to the Claim Administrator's ability and need to perform its duties shall be referred to the District Court if it cannot be resolved by the Parties.
- 5.9 Each recipient of any monies paid in accordance with this Agreement is responsible for any taxes associated with the monies received by each recipient. The Parties agree that Claims paid to Claimants shall be correctly and appropriately allocated as 50% wages (W-2) and 50% non-wages (1099 income) for alleged liquidated damages. Any Service Award approved by the Court shall be deemed non-wage compensation in its entirety.
- 5.10 All employer-side taxes accruing as a result of this Agreement shall be paid out of the Maximum Settlement Amount.
- 5.11 The payments made to Settlement Class Members pursuant to this Agreement are not being made for any other purpose and shall not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation, and no benefit, including but not limited to pension and/or 401(k), shall increase or accrue as a result of any payment made as a result of this Settlement.
- 5.12 P.A.M. is not giving any tax advice in connection with the Settlement or any payments to be made pursuant to this Settlement. Settlement Class Members and Class Counsel agree to defend, indemnify P.A.M. and hold P.A.M. harmless from any liability for taxes, fees, costs, and/or assessments resulting from the Settlement Class Members' or Class Counsel's failure to timely pay taxes, interest, fees, or penalties owed.
- 5.13 Any Claim Check not cashed within the time frame contemplated by this Agreement shall become null and void.

6. NOTICE OF THE SETTLEMENT

- 6.1 As soon as practicable, but within fourteen (14) days after the District Court grants preliminary approval of this Settlement, or on some other reasonable date to be agreed to by the Parties, P.A.M. will provide the Class List to the Claims Administrator and Class Counsel. This data shall include the name, employment dates, and last known address of the Settlement Class Members. At this same time, Class Counsel will provide the Claims Administrator with any self-reported changes to the addresses of Settlement Class Members that were provided to Class Counsel in a Consent Form or through other contact between Class Counsel and the Settlement Class Member. If a Settlement Class Member cannot be located by the Claims Administrator, upon request of the Claims Administrator, P.A.M. shall provide the known social security number of the Settlement Class Member.
- 6.2 The Parties agree that the data provided to the Claims Administrator for purposes of calculating the amount of eligible claims is confidential. The Claims Administrator shall maintain that data in confidence.

- 6.3 The Notice, substantially in the form attached as Exhibit 1 and subject to Court approval, shall be sent by the Claims Administrator to all Settlement Class Members, by first class mail, as soon as practicable, but within fourteen (14) days after receipt of the Class List, or on some other reasonable date to be agreed to by the Parties. As provided in Exhibit 1-A, the Notice shall describe the opt-out process and shall advise Settlement Class Members of their right to object to the Settlement, the process by which such objections must be made, and the date set by the District Court for a hearing on final approval of the Settlement. The Notice shall be mailed in a yellow envelope substantially in the form as attached as Exhibit 1-B.
- 6.4 Prior to mailing the Notice, the Claims Administrator shall process the Class List against the National Change of Address Database maintained by the United States Postal Service (“USPS”). It shall be conclusively presumed that if the Notice is not returned as undeliverable, the Settlement Class Member received the Notice. With respect to any Notice that is returned as undeliverable, if forwarding addresses are provided by the USPS, the Claims Administrator shall re-mail the Notice immediately. If an undeliverable Notice is returned without a forwarding address, the Claims Administrator shall use standard skip tracing devices based on Lexis/Nexis or similar databases to obtain updated address information and shall re-mail the Notice to those Settlement Class Members. The skip tracing shall include all returned envelopes received during the sixty (60) day period after the initial mailing. All re-mailings to skip traced Settlement Class Members shall be performed periodically during the claims filing period and must be completed no later than twenty (20) days before the expiration of the Notice Period. Notices shall only be re-mailed once; if the Notice is returned after re-mailing, there shall be no further skip tracing, and it shall be presumed that the Settlement Class Member cannot be located or has declined to respond.
- 6.5 The Notice and other materials as agreed to by the Parties shall also be available at a website to be set up by the Claims Administrator. P.A.M. and Class Counsel reserve the right to approve the contents of the website, and in the case of any dispute between the Parties, the Parties shall submit the dispute to the Court via a joint letter outlining the position of each Party and will request the Court to issue a decision on the dispute on an emergency basis to be decided prior to the initial mailing being disseminated. The website addresses will be included in the mailed Notice.
- 6.6 The Claims Administrator shall set up a toll free number to respond to inquiries from Settlement Class Members.
- 6.7 Class Counsel agree that they shall not solicit Claimants beyond the mailings of the Notice contemplated by this Agreement and the posting of an agreed-upon short description of the Settlement on Class Counsel’s website. Nothing in this Agreement is intended to prevent Class Counsel from providing legal advice (which may include advising a Settlement Class Member to opt out or to contact other counsel, depending on the factual circumstances) to Settlement Class Members who initiate contact with Class Counsel or who are referred to Class Counsel by the Claims Administrator.

6.8 P.A.M. and its counsel agree that they shall not take any action meant to discourage participation in this matter.

7. OPT-OUT, OBJECTION, AND DISTRIBUTION PROCESS; NO CLAIM FORM

7.1 The Notice shall set forth the date by which Rule 23 Class Claimants and FLSA Collective Action Claimants must have submitted an Opt Out Letter or an objection to the Settlement, the timing of the Final Approval Hearing, and the deadline by which Settlement Class Members must have cashed the Claim Checks issued to them in accordance with this Settlement Agreement, which shall be ninety (90) days from the date on which the Claim Checks are mailed.

7.2 The amount that each Rule 23 Class Claimant is eligible to receive under this Settlement shall be determined in accordance with the formula set forth in Section 5.3 of this Agreement. The amount that each FLSA Collective Action Claimant is eligible to receive under this Settlement shall be determined in accordance with the formula set forth in Section 5.2 of this Agreement. The amounts which the Rule 23 Class Claimants and FLSA Collective Action Claimants are entitled to receive under the Settlement Agreement will be determined by the Claims Administrator based on the employment records provided by P.A.M. Neither the Rule 23 Class Claimants nor FLSA Collective Action Claimants will be required to submit a Claim Form in order to recover.

7.3 P.A.M. shall provide the Claims Administrator and Class Counsel with information sufficient to allow the Claims Administrator to determine how much money each Settlement Class Member is eligible to recover under this Agreement. The Claims Administrator and Class Counsel shall keep this information in confidence. Class Counsel may inform a Settlement Class Member of the amount he or she will receive in the Settlement should a Settlement Class Member contact Class Counsel to request such information.

7.4 Within ten (10) days after the deadline for submitting Opt-Out letters or objections to the Settlement (as set out in Sections 7.9.1 and 7.10, respectively), the Claims Administrator shall provide a spreadsheet to Class Counsel and to P.A.M. that contains information sufficient to determine: (i) the amount proposed to be paid to each Rule 23 Class Claimant and the assumptions that the proposed amounts are based upon; (ii) the amount proposed to be paid to each FLSA Collective Action Claimant and the assumptions that the proposed amounts are based upon; and (iii) which Settlement Class Members have opted-out of the Settlement.

7.5 P.A.M. will provide the Administrator with the Maximum Settlement Amount (minus any amounts already paid to the Administrator), within thirty (30) days after the Settlement Effective Date.

7.6 Claim Checks payable to FLSA Collective Action Claimants and Rule 23 Class Claimants, and payments to Class Counsel and the Class Representative shall be issued by the Claims

Administrator within fifteen (15) business days of receipt of the necessary funds from P.A.M., with the exception that claims subject to audit pursuant to this Section shall be paid within fifteen (15) business days after completion of the audit procedure or upon distribution of proceeds to nonaudited Settlement Class Members, whichever occurs later.

7.7 P.A.M. shall have the right to audit and to challenge the amount the Claims Administrator proposes to pay to each Settlement Class Member in accordance with the procedure set forth in Section 7.8.

7.8 Audit and Challenge Procedure.

7.8.1 Within fourteen (14) days of having received the spreadsheets referenced in Section 7.4 from the Claims Administrator, Class Counsel and P.A.M.'s counsel shall meet and confer regarding any issues that either Class Counsel or P.A.M. believes need to be raised with the Claims Administrator. Class Counsel and P.A.M.'s counsel agree to use their best efforts to resolve any disputes. If Class Counsel and P.A.M. cannot resolve these issues within twenty (20) days of having received each of the spreadsheets contemplated by Section 7.4 from the Claims Administrator, then Class Counsel or P.A.M. may provide written notice of their intent to audit the Claims Administrator's determinations with respect to a particular Claim or Claims.

7.8.2 Audits shall be presented to the Claims Administrator. The decision of the Claims Administrator shall be final.

7.8.3 Either Class Counsel or P.A.M. may invoke their rights under this Section 7.8 by providing written notice to each other and to the Claims Administrator. The notice shall identify the Claim or Claims that are the subject of the audit, and may be accompanied by supporting papers of no more than two (2) pages (excluding exhibits) for each Claim being audited.

7.8.4 Within ten (10) days of receipt of the notice and supporting papers, the nonauditing party may submit a written response of no more than two (2) pages (excluding exhibits) for each Claim being audited.

7.8.5 The Claims Administrator shall decide any audits presented to it within ten (10) days of final submission.

7.8.6 The time periods and page limits set forth in this Subsection may be extended by agreement of the Parties.

7.8.7 Notice of audits, any paperwork submitted in support of, or in response to, any audit, and the decisions by the Claims Administrator shall be served by electronic mail and United States Mail.

7.8.8 Funds payable to any Settlement Class Claimant whose claim has been audited shall not be paid until the Claims Administrator has decided the audit in question pursuant to this Section 7.8. Upon an audit decision being made, any funds due to the audited Settlement Class Member shall be paid within fifteen (15) business days after completion of the audit procedure, or upon distribution of proceeds to nonaudited Settlement Class Members, whichever occurs later.

7.9 Opt-Out Letters.

7.9.1 A Settlement Class Member who wishes to exclude himself or herself from this Settlement, and from the release of claims pursuant to this Settlement, shall submit an Opt-Out Letter. For an Opt-Out Letter to be accepted it must be timely and valid. To be timely it must be postmarked or electronically filed by the date indicated in the Notice, which shall be Seventy-Five (75) days after the Notice is first mailed to Settlement Class Members. To be valid, the Opt-Out Letter shall contain a statement that the Settlement Class Member requests to be excluded from the Settlement Class, and it must be signed and dated, and must contain the last 4 digits of the Class Member's social security number. Additional instructions for Opt-Out Letters are found in the Notice.

7.9.2 A Settlement Class Member who submits an Opt-Out Letter is not eligible to recover a share of the Net Settlement Fund.

7.9.3 The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to the Parties upon request. The Claims Administrator shall retain the originals of all Opt-Out Letters (including the envelopes with the postmarks or the equivalent for electronically filed forms) received from Settlement Class Members, and shall make copies or the originals available to P.A.M. or Class Counsel upon request.

7.10 A Settlement Class Member who wishes to object to the Settlement must send a written notice of objection to the Claims Administrator (who shall promptly file said objection with the District Court and provide notice of the same to P.A.M. and Class Counsel), postmarked or electronically filed on or before the date which is Seventy-Five (75) days after the Notice is first mailed to Settlement Class Members. Instructions regarding how to object are found in the Notice. Settlement Class Members who file and serve a timely notice of objection will have a right to appear at the Final Approval Hearing in order to have their objection heard by the District Court. Settlement Class Members who fail to file and serve both a timely written objection or a notice of intention to appear and object in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

7.11 Prior to Final Approval, P.A.M. shall have the right in its sole discretion to withdraw from this Agreement and declare this Agreement null and void if any one of the following occurs: (a) more than 5.0% of the Settlement Class Members opt-out of the Settlement; or (b) the Settlement is construed in a fashion that P.A.M. would pay more than the Maximum

Settlement Amount. P.A.M. must provide notice to Class Counsel that it is exercising its right to withdraw from this Agreement at least fourteen (14) days after learning of an event which triggers its right to withdraw.

- 7.12 In the event that Final Approval of this Agreement is not granted by the Court, or P.A.M. withdraws from this Agreement under its terms, neither the Agreement, nor any documents related to this Settlement, nor any negotiations leading to the Settlement may be used as evidence for any purpose, and P.A.M. shall retain the right to challenge all claims and allegations in the Litigation and assert all applicable defenses, and the certification for settlement purposes only shall become null and void.
- 7.13 This Agreement is subject to Court approval. The Parties will work together to seek certification of a settlement-only Rule 23 class and certification of a settlement-only FLSA collective class. The Parties will work together to seek approval of this Agreement. Should the Court decline to approve this Agreement (except for approval of the award of Class Counsel's Attorneys' Fees and Costs, class representative Service Award, or Notice and Administration Costs), or fail to dismiss the Litigation with prejudice, P.A.M. shall have no obligation to make any payment under this Agreement, and in the event that P.A.M. has made any such payment, such monies shall be returned promptly to P.A.M. (minus any Notice and Administration Costs already reasonably incurred by the Claim Administrator).
- 7.14 Ninety (90) days following issuance of Claim Checks to any Settlement Class Member or plaintiff or opt-in, any check not cashed shall expire and become null and void. The Claims Administrator shall immediately take appropriate steps to cancel all Claim Checks once they have expired and shall return any funds remaining in the Claims Administrator's possession to P.A.M. within ten (10) business days after cancelling expired Claim Checks.

8. COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL

- 8.1 Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, regardless of whether they cash the Claim Check issued pursuant to this Agreement, Named Plaintiff, the Settlement Class Representative, on her own behalf and on behalf of all the Settlement Class Members, and all Settlement Class Members, other than those who submit timely and valid Opt-Out Letters (collectively, "**Releasing Settlement Class Members**"), do hereby irrevocably release, acquit, and forever discharge P.A.M. and any of its current or former subsidiaries, direct or indirect parent entities, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, and those plans' respective trustees, administrators, and fiduciaries (collectively "**Releasees**") of any and all Wage and Hour compensation claims, including FLSA claims and state law Wage and Hour claims, if any, relating back to the beginning of time through the end of the Settlement Class Period, including but not limited to orientation claims, training claims, travel-time claims, mileage

pay claims, meal and rest break claims, claims related to Comdata and escrow accounts, and any and all other Wage and Hour claims, complaints, causes of action, obligations, penalties, interest, and liquidated damages, as well as all claims for attorneys' fees, costs, and expenses, that were or could have been asserted in this matter, against Releasees. The Releasing Settlement Class Members specifically acknowledge that this release reflects a compromise of disputed claims.

- 8.2 The Released Claims include the common law, equitable claims, and federal and state statutory claims set forth in the Complaint filed in this matter and all other claims, whether known or unknown, which seek compensation for violations of Wage and Hour laws, whether state or federal, and which arise out of the alleged facts, circumstances, and occurrences underlying the allegations as set forth in the Complaint or in any other pleadings filed in the Litigation, relating back to the beginning of time through the end of the Settlement Class Period.
- 8.2.1 This release also includes a release of all claims for attorneys' fees and costs incurred by Releasing Settlement Class Members or by Class Counsel in connection with the Litigation and the Settlement of the Litigation.
- 8.2.2 The Releasing Settlement Class Members understand and agree that this release is a full and final release applying to both those Released Claims that are currently known, anticipated, or disclosed to the Releasing Settlement Class Members and to all those Released Claims that are presently unknown, unanticipated, or undisclosed to any and all Releasing Settlement Class Members: (i) arising out of the alleged facts, circumstances, or occurrences alleged in any Complaint filed in the Litigation; (ii) the claims alleged or which could have been alleged in the Litigation; and (iii) P.A.M.'s conduct with respect to the Litigation. Each Settlement Class Member who does not submit a timely and valid Opt-Out Letter hereby releases the Releasees from the Released Claims, relating back to the beginning of time through the end of the Settlement Class Period.
- 8.2.3 In addition to the Released Claims described above, in exchange for the consideration recited in this Agreement, including but not limited to the Class Representative Service Award, Plaintiff, Dianna Estes, forever releases, acquits, and discharges and covenants not to sue the Releasees for any claim, whether known or unknown, which she has ever had, or hereafter may claim to have, arising on or before the date she signs this Agreement, including without limitation, any claims relating to or arising out of any aspect of her employment with P.A.M., or the termination of her employment with P.A.M., any claims for unpaid compensation, wages, bonuses, penalties, or waiting time penalties under Arkansas law; any claims for employee benefits, including without limitation, any claims under the Employee Retirement Income Security Act of 1974, any claims of employment discrimination on any basis, including without limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, or any other state, county

or city law or ordinance regarding employment discrimination. Plaintiff specifically acknowledges and agrees that the foregoing general release is given in exchange for the consideration provided to her under this Agreement by P.A.M.

- 8.2.4 Notwithstanding the foregoing, nothing in this Settlement Agreement is intended to release any FLSA claim of any individual who is not a party plaintiff or plaintiff participating in the FLSA collective action (*i.e.* any individual who did not file a Consent Form or who is not named in the caption is not releasing any FLSA claim). However, that this Settlement Agreement is not intended to release such claims does not bar any Released Party from later asserting that such claims are barred due to any defense available to the Released Party, including, but not limited to, defenses of statute of limitations, laches, and *res judicata*.

9. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL

- 9.1 Upon execution of this Agreement, the Parties or Class Counsel shall promptly apply to the District Court for the entry of an order granting preliminary approval of the Settlement, including the following. The Parties shall cooperate in good faith in seeking preliminary approval.
- 9.1.1 Certifying the Settlement Class for settlement purposes only in accordance with this Agreement;
- 9.1.2 Approving as to form and content the proposed Notice of Pendency of Class Action and Proposed Settlement;
- 9.1.3 Approving the manner and method for Settlement Class Members to request exclusion from the Settlement as contained herein;
- 9.1.4 Directing the mailing of the Notice by first class mail to the Settlement Class Members.
- 9.1.5 Preliminarily approving the Settlement, subject only to objections of Settlement Class Members and final approval by the Court;
- 9.1.6 Approving Swartz Swidler, LLC as Class Counsel, approving Dianna Estes as Settlement Class Representative, and approving the Claims Administrator.
- 9.1.7 Scheduling a final fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Class, as close to August 1, 2015, as is available on the Court's calendar;

10. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

- 10.1 Following preliminary approval by the Court of the Settlement, and following the end of the 90-day Notice Period, Class Counsel will submit a proposed Final Judgment and Order of Dismissal. The proposed Final Judgment and Order of Dismissal shall:
 - 10.1.1 Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
 - 10.1.2 Approve an award of attorneys' fees and reimbursement of costs to Class Counsel;
 - 10.1.3 Approve a Service Award to the Settlement Class Representative;
 - 10.1.4 Certify the Settlement Class (including the FLSA Collective Action and the Rule 23 Class Action) for settlement purposes only in accordance with this Agreement;
 - 10.1.5 Dismiss this Litigation on the merits and with prejudice and permanently bar the Settlement Class Representative, and all Releasing Settlement Class Members from further prosecuting any of the Released Claims against the Releasees.
- 10.2 P.A.M. and Class Counsel shall cooperate as necessary to obtain final approval and the dismissal of the Litigation.

11. MUTUAL FULL COOPERATION

- 11.1 The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to, execution of all necessary documents, and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Agreement. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of P.A.M. and its counsel, take all necessary steps to secure the Court's Final Judgment.
- 11.2 If the Settlement Class Representatives or P.A.M. cannot reasonably comply with an obligation under this Agreement by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

12. STATEMENT OF NO ADMISSION

- 12.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of P.A.M., and P.A.M. expressly denies any liability, culpability, or wrongdoing. Nor shall this Agreement constitute an admission by P.A.M. as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Likewise, nothing in this agreement shall be construed or deemed an admission with regards to the validity of any of P.A.M.'s defenses

or affirmative defenses. Nothing in this Agreement shall be construed or deemed an admission as to the suitability of these claims for collective or class treatment, other than as a settlement-only class, and P.A.M. expressly denies that collective or class action would be appropriate otherwise. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation and the attendant risks, inconveniences, and expenses.

- 12.2 This Agreement, and all related documents, and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement are settlement documents and shall be inadmissible in evidence and shall not be used for any purpose in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, including any Wage and Hour or other litigation against P.A.M., for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.
- 12.3 The Notice, Opt-Out Letters, the calculations by Plaintiffs' third-party expert, and any other evidence produced or created by any Settlement Class Member in connection with the claims resolution procedures pursuant to this Settlement, and any actions taken by P.A.M. in response to such Notice, Opt-Out Letters, the calculations by the Claims Administrator, or other evidence, do not constitute, are not intended to constitute, and will not be deemed to constitute, an admission by P.A.M. of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or of any obligation or duty at law or in equity.
- 12.4 In the event that this Agreement is not approved by the District Court or any appellate court, or otherwise fails to become effective and enforceable, or is terminated, P.A.M. will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Litigation.

13. VOIDING THE AGREEMENT

- 13.1 In the event that this Settlement is not approved, or if P.A.M. withdraws from the Settlement pursuant to an event listed in Section 7.11 of this Agreement, or if for any reason the Settlement Effective Date does not occur, the Settlement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any Wage and Hour or other litigation against P.A.M.
- 13.2 In the event the Court does not approve the Attorneys' Fees and Costs in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel are reduced, that finding shall not be a basis for rendering the entire Agreement null, void, or unenforceable. Class Counsel retain their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs.

14. PARTIES' AUTHORITY

- 14.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

15. NO PRIOR ASSIGNMENTS

- 15.1 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

16. NOTICES

- 16.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of: (i) the date given, if given by hand delivery or electronic mail; (ii) within one business day, if sent by overnight delivery services such as Federal Express or similar courier; or (iii) the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given under this Agreement shall be addressed as follows:

16.1.1 To the Class:

Justin L. Swidler,
Richard Swartz
Swartz Swidler, LLC
1101 Kings Hwy N., Ste 402
Cherry Hill, NJ 08034
Tel: (856) 685-7420
Fax: (856) 685-7417
jswidler@swartz-legal.com
rswartz@swartz-legal.com

16.1.2 To P.A.M.:

Robert L. Jones, III
Amber Prince
Conner & Winters, LLP
4375 N. Vantage Dr., Suite 405
Fayetteville, AR 72703
Tel.: (479) 582-5711
Fax: (479) 587-1426
bjones@cwlaw.com
aprince@cwlaw.com

17. CONFIDENTIALITY

- 17.1 The Parties agree to maintain confidentiality regarding the fact of the settlement and the amount of the settlement until filing for preliminary approval with the court, except to the extent P.A.M. must make necessary disclosures to its public accountants or in SEC Filings, such as Form 10-Q, or in statements (such as earnings statements) made to shareholders pursuant to industry custom and practice.
- 17.2 Even after final approval of the Settlement by the Court, if such occurs, the Parties agree that they will not contact the media and will not make any press releases regarding the Settlement, except to the extent P.A.M. must make necessary disclosures to its public accountants or in SEC Filings, such as Form 10-Q, or in statements (such as earnings statements) made to shareholders pursuant to industry custom and practice. The Parties will have no comment in response to any media request for comment or information unless the Parties jointly agree in advance to an approved statement. Any statements on the website of Class Counsel or the Claims Administrator about the Settlement must be approved in advance by P.A.M.

18. DOCUMENTS AND DISCOVERY

- 18.1 Within one-hundred eighty (180) days after the Settlement Effective Date, Class Counsel shall take steps necessary to segregate from all other of their litigation files: all documents and data produced by P.A.M. to Class Counsel in connection with this Litigation and which are currently in Class Counsel's possession, custody or control, including documents and data in the possession, custody or control of their retained experts and consultants. Class Counsel shall only access such information in the event they are Court ordered to produce same or in the event they need to access same in the event any Class Member files any type of claim in any forum against Class Counsel related to their representation of the Class Members in this matter. Class Counsel shall certify to P.A.M. their good faith efforts to comply with this provision.

19. MISCELLANEOUS PROVISIONS


- 19.1 Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Agreement.
- 19.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision. Each term of this Agreement is contractual and not merely a recital.

- 19.3 Modification. This Settlement may not be changed, altered, or modified, except in a writing signed by the Settlement Class Representatives and P.A.M., and approved by the District Court. Notwithstanding the forgoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification.
- 19.4 Integration Clause. This Agreement, the Exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.
- 19.5 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.
- 19.6 Class Counsel and Settlement Class Representative Signatories. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Agreement. The Notice will provide all Settlement Class Members with a summary of the Settlement, and will advise all Settlement Class Members of the binding nature of the release. Excepting only those Settlement Class Members who timely submit an Opt-Out Letter, the Notice shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.
- 19.7 Counterparts. This Agreement may be executed by facsimile signature, .pdf signature, and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.
- 19.8 Applicable Law. This Agreement shall be governed by Arkansas law without regard to its choice of law or conflicts of law principles or provisions. Any claim arising out of or relating to the Settlement, or the subject matter hereof, will be resolved solely and exclusively by the United States District Court for the Western District of Arkansas, Fayetteville Division, and the Parties hereby consent to the personal jurisdiction of the District Court over them solely in connection therewith.

On Behalf of the Class:

Dated: Aug 20, 2015 _____, 2015

SWARTZ SWIDLER, LLC

By: 
Justin L. Swidler, Esq.
Swartz Swidler, LLC
1101 Kings Hwy N., Ste 402
Cherry Hill, NJ 08034
Tel: (856) 685-7420
Fax: (856) 685-7417
jswidler@swartz-legal.com

Dated: Aug 20, 2015 _____, 2015

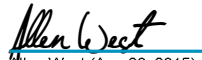
Individually and on behalf of the Settlement
Class Members:


Dianne Estes (Aug 20, 2015)
Dianna Estes

On Behalf of P.A.M. Transport, Inc.:

Dated: Aug 20, 2015 _____, 2015

P.A.M. Transport, Inc.


Allen West (Aug 20, 2015)
Name:
Title: CFO

Dated: Aug 20, 2015 _____, 2015

CONNER & WINTERS, LLP

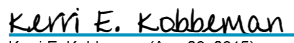
By: 
Kerri E. Kobbeman (Aug 20, 2015)
Kerri Kobbeman
Conner & Winters, LLP
4375 N. Vantage Dr., Suite 405
Fayetteville, AR 72703
Tel.: (479) 582-5711
Fax: (479) 587-1426
KKobbeman@cwlaw.com

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS

As a current or former over-the-road driver for P.A.M. Transport, you are eligible to get a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- The settlement will provide up to \$3,450,000 to resolve all claims that P.A.M. Transport failed to pay its drivers minimum wage under federal and state law during the Class Period of August 22, 2010 through December 5, 2013.
- The court-appointed lawyers will ask the Court for up to 33 1/3% of the maximum \$3,450,000 settlement amount as fees and costs for investigating the case, litigating the case, and negotiating the settlement.
- The two sides disagree as to who would win, and how much could be won, if the case went to trial.
- **Your legal rights will be affected whether you act or don't act.** Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Do Nothing	No action is required of you to remain in the case. If the Court grants final approval of the settlement, you will automatically be sent a payment.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against P.A.M. Transport for the legal claims that are being released in this Settlement.
Object	Write to the Court about what you don't like in the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

- These rights and options – and the deadlines to exercise them – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

QUESTIONS? CALL CLASS COUNSEL TOLL-FREE 1-877-529-9501 OR VISIT WWW.SWARTZ-LEGAL.COM

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Please note that, as set forth in detail in this Notice and in the Settlement Agreement on file with the Federal Court, if the Court grants final approval of the Settlement, then any and all wage and hour claims that you may have against P.A.M. Transport (and/or any of its parents, subsidiaries, affiliates, divisions, predecessors and successors, and each of their present and former officers, directors, shareholders, members, managers, employees, fiduciaries, trustees, employee benefit plan administrators, agents, attorneys, insurers, successors and assigns) for the non-payment of compensation alleged to be owed to you in the Lawsuit during the Claims Period, will be permanently released (i.e., forever waived/forgiven).

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

DIANNA ESTES, *et al.*

Plaintiffs,

v.

P.A.M TRANSPORT, INC., *et al.*

Defendants.

Case No.: 13-5199

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY.

1. Why did I get this notice package?

You are receiving this notice because records indicate that you worked as an over-the-road commercial truck driver for and were paid by P.A.M. Transport, Inc. (“P.A.M.”) at some point between August 22, 2010 and December 5, 2013. The above-referenced lawsuit, *Dianna Estes, et al. v. P.A.M. Transport, Inc., et al.*, 13-5199 (the “Lawsuit”), is pending in the United States District Court for the Western District of Arkansas in Fayetteville, Arkansas (the “Federal Court”). You are receiving this Notice because the Federal Court has ordered that it be mailed to you.

The Federal Court has preliminarily approved a settlement (“Settlement”) of the Lawsuit. The Settlement provides for current and former over-the-road drivers of P.A.M. to receive a portion of a Three Million, Four-Hundred Fifty Thousand Dollar (\$3,450,000) fund (“Settlement Fund”). The Federal Court will conduct a hearing (“Fairness Hearing”) to determine if the Settlement should be approved.

This Notice describes the Settlement and describes how you can obtain a money recovery from the Settlement. This Notice also describes how you can exclude yourself from, or object to, the Settlement.

2. What is this lawsuit about and why did it settle?

The Lawsuit alleges that P.A.M. violated the federal Fair Labor Standards Act (“FLSA”) and the Arkansas Minimum Wage Law by failing to pay over-the-road drivers an amount equal to at least the federal minimum and state minimum hourly wage for compensable work. The Lawsuit contends that P.A.M. violated the law by failing to pay for certain activities which the Plaintiffs allege are compensable as a matter of law, including driving time, on-duty not driving time, and time spent in a truck’s sleeper berth beyond 8 hours per day.

Even though P.A.M. denies that it has violated any law and has what it believes are meritorious defenses to the claims alleged, it has decided to settle the Lawsuit. The Settlement enables P.A.M. to avoid the costs and business distraction of protracted

litigation and to dedicate its time and resources to ongoing business operations and, as such, benefits both its employees and customers.

The employees' attorneys, who are referred to as "Class Counsel," believe that the Settlement benefits the class members. The Settlement provides a benefit to a large number of present and former drivers, and enables the class members to avoid the risk that P.A.M. could win the lawsuit, in which case class members would recover nothing. The Settlement also enables class members to recover money without the delay of protracted litigation.

The parties' attorneys negotiated the Settlement after nearly two years of litigation that has enabled each side to understand the risks of proceeding with adversarial litigation. Pay and time records for over one thousand drivers in the class were analyzed. Class Counsel believe that the Settlement is fair and serves the best interests of the class members. The Federal Judge overseeing the Lawsuit has "preliminarily approved" the Settlement as fair. The Federal Judge will make his final decision regarding the fairness of the Settlement at the Fairness Hearing described in Section 7 below.

3. What does the Settlement provide and how much will I be paid?

Under the Settlement, P.A.M. has agreed to pay a Settlement amount of Three Million, Four-Hundred Fifty Thousand Dollars (\$3,450,000) to resolve all claims asserted in the Lawsuit. Your "Individual Settlement Payment" will be calculated based upon the settlement formula stated in the settlement agreement on file with the Court.

After litigation costs, attorney's fees, service payments, and certain taxes are subtracted from the Settlement Fund, the remaining fund (the "Net Fund") will be divided into two equal funds, the FLSA Fund and the Arkansas State Law Fund. If you submitted a Consent Form to join this action prior to March 31, 2015, you will receive a payment out of the FLSA Fund. If you did not submit a Consent Form to join this action prior to March 31, 2015, you will receive a payment out of the Arkansas State Law Fund.

For individuals who submitted a Consent Form prior to March 31, 2015, their settlement payment will be equal to \$50 plus an additional amount per each workweek they were employed by PAM. The weekly amount will be calculated by dividing the total amount left in the FLSA Fund (after making the \$50 payments to such individuals) by the total number of weeks worked by such individuals. There entire FLSA Fund will be paid to individuals who submitted an FLSA Consent Form prior to March 31, 2015.

For individuals who did not submit a Consent Form prior to March 31, 2015, their settlement payment will be equal to \$35 plus an additional amount per each workweek they were employed by PAM. The weekly amount will be calculated by dividing the total amount left in the Arkansas State Law Fund (after making the \$35 payments to such individuals) by the total number of weeks worked by such individuals. There entire Arkansas State Law Fund will be paid to individuals who did not submit a Consent Form prior to March 31, 2015.

One-half of your settlement amount will be paid in the form of a payroll check less all ordinary payroll taxes and withholdings. This payment will be reported on an IRS Form W2 issued after the end of the tax year. The other half of your settlement amount will be paid in the form of a non-payroll check with no deduction for payroll taxes or withholdings. This payment will be reported on an IRS Form 1099 issued after the end of the tax year.

At the Fairness Hearing, Class Counsel will apply to receive up to one-third of the Total Settlement (equivalent to \$1,150,000) for the services they provided and for reimbursement of the out-of-pocket expenses they incurred in the Lawsuit. This amount will be requested based on the substantial work Class Counsel performed in the Lawsuit and the risk Class Counsel took in bringing the Lawsuit. Class Counsel has conducted extensive investigation in prosecuting the Lawsuit, including, but not limited to,

interviewing hundreds of employees, taking and defending numerous depositions, reviewing thousands of documents related to the Lawsuit, including hundreds of thousands of electronic records, propounding discovery, answering discovery for a substantial number of Class Members, reviewing and analyzing substantial amounts of payroll and time data, drafting and filing of motions, and hiring and consulting with experts.

At the Fairness Hearing, Named Plaintiff Dianna Estes will apply for a service payment of \$10,000. The Service Payment is requested because the Named Plaintiff provided service to the Settlement Class by helping Class Counsel formulate claims and by assisting in bringing the Lawsuit forward. The Named Plaintiff answered questions under oath in a deposition and assisted in discovery. The Service Payment is separate from, and in addition to, the portion of the Settlement Fund that Named Plaintiff may receive as a member of the Settlement Class.

Additionally, at the Fairness Hearing, each class member who sat for a deposition in this matter will request a service payment of three hundred dollars (\$300). There are fifteen class members who sat for deposition in this matter. These service payments are requested because these individuals volunteered to be deposed to assist in providing representative testimony for the benefit of all class members.

4. How can I receive my payment?

You do not need to take any further action to receive a payment. However, if your address has changed since you filed a Consent Form and/or worked for PAM, or if you move prior to receiving a check, you should contact the Claims Administrator at (xxx) xxx-xxxx to notify the Claims Administrator of your new address. You may also provide change of address information via facsimile to (xxx) xxx-xxxx or by e-mail to somone@kcc.com.

The parties anticipate that the settlement checks will be issued in the ____ Quarter of 2015.

5. What am I giving up as a Class member?

If the Federal Court grants final approval of the Settlement, the Lawsuit will be dismissed with prejudice.

If you have previously filed a Consent Form to join this action, you will fully and forever release any and all Wage and Hour claims, including FLSA claims and state law Wage and Hour claims, if any, relating back to the beginning of time through the end of the December 5, 2013, including but not limited to orientation claims, training claims, travel-time claims, mileage pay claims, meal and rest break claims, and any and all other Wage and Hour claims that were or could have been asserted in this matter, against P.A.M., and including, without limitations, all state and federal claims for wages, penalties, interest, and liquidated damages, as well as all claims for attorneys' fees, costs, and expenses.

If you have not previously filed a Consent Form to join this action, you will release all wage and hour claims, excluding FLSA claims, if any, relating back to the beginning of time through the end of the December 5, 2013, including but not limited to state-law orientation claims, training claims, travel-time claims, mileage pay claims, meal and rest break claims, and any and all other state-law Wage and Hour claims that were or could have been asserted in this matter, against P.A.M., and including, without limitations, all state claims for wages, penalties, interest, and liquidated damages, as well as all claims for attorneys' fees, costs, and expenses.

6. How do I exclude myself (opt-out) from this Settlement?

You will release your legal claims, as described in Section 5 above, unless you affirmatively exclude yourself from the Settlement. If you exclude yourself, you will not release or waive any legal claims, and you will preserve your right to sue P.A.M. on your own for alleged violations of the Released Claims. If you exclude yourself from the Settlement, you will not receive money in this Settlement.

To exclude yourself from the Settlement, you must mail a written request to opt-out of the settlement to [KCC ADDRESS], or you may send your request via facsimile to (xxx) xxx-xxxx or by e-mail to somone@kcc.com. Your request for exclusion must be postmarked or submitted on or before [75 days from mailing date] to be valid. To be valid, the Request for Exclusion from Class Settlement must be signed and dated by you, and must include the name of the case. You should also provide your phone number on the request in case the Claims Administrator needs to contact you regarding same.

7. Final Approval of Settlement at Fairness Hearing

The Federal Judge presiding over this Lawsuit will conduct a Final Fairness Hearing at [TIME] on [DATE], 2015 in Courtroom [] of the United States Courthouse, [ADDRESS]. At the Fairness Hearing, the Judge will decide whether the Settlement is sufficiently fair and reasonable to warrant final court approval. You are not required or expected to attend the Fairness Hearing. However, you are welcome to attend at your own expense. If you plan on attending, please contact Class Counsel so that the Court can be notified to ensure that there is enough space and time allotted for you.

8. How do I object to the Settlement?

If you believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement, either personally or through an attorney, at your own expense, by filing a written objection with the Court and mailing a copy of your written objection to [KCC ADDRESS], or you may send your objection via facsimile to (xxx) xxx-xxxx or by e-mail to somone@kcc.com. In order to object to the Settlement, you must remain a class member and may not opt-out from the Settlement.

All objection(s) to any part of the Settlement must be signed by you or your counsel and set forth your address, telephone number, and the name of the Action: *Dianna Estes v. P.A.M. Transport, Inc.* (Civ. No. 13-5199). All objections must be postmarked or submitted no later than **[**75 Days from Mailing**]**. If you submit a timely objection, you may appear, either personally or through an attorney, at your own expense, at the Final Approval Hearing discussed above. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or someone on your behalf intends to appear at the Final Approval Hearing. If you object to the Settlement, Class Counsel will not represent you in your objection.

Any class member who does not object in the manner described above shall be deemed to have waived any objections, and shall forever be foreclosed from objecting to the fairness and adequacy of the proposed Settlement, the payment of attorneys' fees, service payments, and litigation costs, the claims process, and any and all other aspects of the Settlement.

Likewise, regardless of whether you file an objection, you will be deemed to have released all of the Released Claims against P.A.M. and subject to the Release contained in the Settlement Agreement as explained in Section 5 above unless you properly request exclusion from the Settlement in accordance with Section 6 above. Please note that if you exclude yourself from the Settlement by following the procedures set forth in Section 6 above, you will not have standing to object to the Settlement, and the Court will not consider your objection at the Final Fairness Hearing.

10. Are there more details about the Settlement? Questions?

Yes. This Notice summarizes the most important aspects of the Settlement. You can get a copy of the written Settlement Agreement and obtain further information regarding the Lawsuit and the Settlement by calling Class Counsel. Their contact information is listed below. You will not be charged any money for communicating with Class Counsel.

11. Do I have an attorney in this case?

The Court has appointed Swartz Swidler, LLC, Richard Swartz, and Justin Swidler as “Class Counsel” to represent the interests of class members in the Lawsuit. Class Counsel will represent you in the Lawsuit and can answer questions for you regarding the Lawsuit and the Settlement. Class Counsel’s contact information is below. You will not be charged any money for Class Counsel’s representation of you; rather Class Counsel will be paid out of the class-wide Settlement Fund. You also have the right to get your own attorney at your own expense in which case Class Counsel will not represent you in the Lawsuit or Settlement. If you object to the Settlement, Class Counsel will not represent you in your objections.

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