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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

LUIS CARLOS DELUNA, individually and
on behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

AMERIT FLEET SOLUTIONS, INC., a
California corporation; KELLEYAMERIT
FLEET SERVICES, an unknown business
entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVDS1721564

Honorable David Cohn
Department S-26

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE BETWEEN PLAINTIFF
AND DEFENDANT**

Complaint Filed: October 31, 2017

1 This Joint Stipulation of Settlement and Release (hereinafter “Stipulation of Settlement”
2 is made and entered into by and between Plaintiff LUIS CARLOS DELUNA (“Plaintiff”),
3 individually, and on behalf of other members of the general public similarly situated, and
4 AMERIT FLEET SOLUTIONS, INC. and KELLEY AMERIT FLEET SERVICES.
5 (“Defendants”).

6 This Stipulation of Settlement shall be binding on Plaintiff and those persons Plaintiff
7 seeks to represent, and on Defendants and their past, present and former parent companies,
8 subsidiaries, divisions, related or affiliated companies including, but not limited to, its past,
9 current and future shareholders, partners, officers, directors, fiduciaries, members, supervisory
10 committee members, volunteers, managers, clients, employees, agents, attorneys, insurers,
11 successors and assigns, and any individual or entity who could be jointly liable with any of the
12 foregoing, and their respective counsel, subject to the terms and conditions hereof and the
13 Court’s approval. The Settlement contemplated by this Stipulation of Settlement is sometimes
14 hereinafter referred to as the “Settlement.”
15

16 THE PARTIES STIPULATE AND AGREE as follows:

- 17 1. Plaintiff and Defendants are collectively referred to herein as “the Parties.”
- 18 2. On October 31, 2017, Plaintiff filed a complaint in the San Bernardino County
19 Superior Court on behalf of himself and all other non-exempt fleet maintenance employees who
20 worked for Defendants in California during the relevant time period. Defendants filed an answer
21 to this initial complaint denying all material allegations and asserting affirmative defenses.
- 22 3. Plaintiff’s Complaint alleges causes of action for unpaid overtime, unpaid meal
23 period premiums, unpaid rest period premiums, wages not timely or properly paid during
24 employment, non-compliant wage statements, failure to keep requisite payroll records,
25 unreimbursed business expenses, and unfair competition, on behalf of Class Members from
26 October 31, 2013 through final judgment. Plaintiff’s Complaint seeks recovery of alleged
27 damages, penalties, interest, and attorneys’ fees and costs. Defendants deny all claims, deny that
28 Plaintiff and the Class Members are entitled to any recovery, and assert affirmative defenses in

1 response to Plaintiff’s claims. The term “Action” means this putative class action pending San
2 Bernardino County Superior Court.

3 4. Plaintiff has not filed a motion for class certification in this action, nor has a date
4 been set by the Court for the filing of such a motion.

5 5. This Action has been actively litigated. There have been on-going
6 investigations, and there has been an exchange of extensive documentation and information.

7 6. For purposes of this Settlement, the “Settlement Class” or “Class Members” shall
8 consist of “all current and former non-exempt employees of Defendants in California at any time
9 between October 31, 2013 and the date of preliminary approval of this class action settlement or
10 60 days from June 5, 2018, whichever date is earlier (the “Settlement Class” or the “Class
11 Members”). The Settlement Class, however, shall not include any person who previously settled
12 or released the claims covered by this Settlement, any person who previously was paid or received
13 awards through civil or administrative actions for the claims covered by this Settlement, or any
14 person who submits a timely and valid Request for Exclusion as provided in this Settlement.

15 7. Solely for purpose of settling this case, the Parties stipulate and agree that the
16 requisites for establishing class certification with respect to the Settlement Class have been met
17 and are met. More specifically, the Parties stipulate and agree that:

18 a. The Settlement Class is ascertainable and so numerous as to make it
19 impracticable to join all Class Members.

20 b. There are common questions of law and fact including, but not limited to,
21 the following:

22 i. Whether Defendants complied with applicable laws affecting
23 Plaintiff and the Settlement Class under the California Labor Code and the Wage Orders of the
24 California Industrial Welfare Commission; and

25 ii. Whether Plaintiff and the Settlement Class are entitled to alleged
26 penalties, interest, and attorneys’ fees and costs.
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1 c. Plaintiff believes Plaintiff's claims are typical of the claims of the
2 members of the Settlement Class.

3 d. Plaintiff believes Plaintiff will fairly and adequately protect the interests
4 of the Settlement Class, and that Plaintiff's counsel Heather Davis of Protection Law Group
5 LLP, and Edwin Aiwazian of Lawyers *for* Justice P.C. should be "Class Counsel," and will
6 fairly and adequately protect the interests of the Settlement Class.

7 e. The prosecution of separate actions by individual members of the
8 Settlement Class would create the risk of inconsistent or varying adjudications, which would
9 establish incompatible standards of conduct.

10 f. With respect to the Settlement Class, Plaintiff believes that questions of
11 law and fact common to the members of the Settlement Class predominate over any questions
12 affecting any individual member in such Class, and a class action is superior to other available
13 means for the fair and efficient adjudication of the controversy.

14 8. Defendants deny any liability or wrongdoing of any kind whatsoever associated
15 with the claims alleged in the Action, and further deny that, for any purpose other than settling
16 this Action, this Action is appropriate for class or representative treatment. With respect to
17 Plaintiff's claims, Defendants contend, among other things, that they have complied with all
18 applicable state, federal and local laws affecting Plaintiff and the Settlement Class.

19 9. It is the desire of the Parties to fully, finally and forever settle, compromise and
20 discharge all disputes and claims arising from or related to the Action. To achieve a full and
21 complete release of Defendants, each Class Member acknowledges that this Stipulation of
22 Settlement is intended to include in its effect all claims of any nature reasonably arising out of
23 the allegations made in the Action and all Released Claims against all Released Parties (as those
24 terms are defined herein) under any federal, state or local law, including any such claims which
25 the Class Member does not know or suspect to exist in his or her favor against Defendants as of
26 the date of the Court's final approval of this Settlement.
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1 10. It is the intention of the Parties that this Stipulation of Settlement shall constitute
2 a full and complete settlement and release of all claims arising from the allegations of this class
3 action case against Defendants, which release includes in its effect all past, present and former
4 parent companies, subsidiaries, divisions, partnership entities, related or affiliated companies,
5 including past, current and future shareholders, officers, directors, fiduciaries, members,
6 supervisory committee members, volunteers, officers, managers, employees, agents, attorneys,
7 insurers, successors and assigns, and any individual or entity who could be jointly liable with
8 any of the foregoing.

9 11. Counsel for the Settlement Class have conducted a thorough investigation into
10 the facts of this Action and have diligently pursued an investigation of Class Members' claims
11 against Defendants. Based on their own independent investigation and evaluation, Class
12 Counsel are of the opinion that the Settlement with Defendants for the consideration and on the
13 terms set forth in this Stipulation of Settlement is fair, reasonable and adequate and is in the best
14 interest of the Settlement Class in light of all known facts and circumstances, including the risk
15 of significant delay, the risk the Settlement Class will not be certified by the Court, defenses
16 asserted by Defendants and numerous potential appellate issues. Defendants and Defendants'
17 counsel also agree that the Settlement is fair and in the best interest of the Parties.

18 12. The Parties agree to cooperate and to take all steps necessary and appropriate to
19 consummate this Settlement and for entry of judgment in accordance with this Stipulation of
20 Settlement.

21 13. This Settlement requires Defendants to pay Settlement Awards (defined below)
22 according to a specified formula to each Class Member. The maximum total payment under the
23 Settlement is \$1,900,000.00, which represents the Settlement Awards, the attorneys' fees and
24 costs to Class Counsel, the Enhancement Award to the Class Representative, the claims
25 administration costs, and any other payments provided by the Settlement. It is understood and
26 agreed that Defendants' maximum total liability under the Settlement shall not exceed
27 \$1,900,000.00. It is further understood and agreed that Defendants shall have no obligation to
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1 pay any person, entity or organization more than the amount of its maximum total liability under
2 the Settlement.

3 TERMS OF SETTLEMENT

4 14. NOW THEREFORE, in consideration of the mutual covenants, promises and
5 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

6 a. It is agreed by and among Plaintiff and Defendants that this Action and
7 any claims, damages or causes of action arising out of the disputes which are the subject of this
8 Action, be settled and compromised as between the Settlement Class and Defendants, subject to
9 the terms and conditions set forth in this Stipulation of Settlement and the approval of the Court.

10 b. Effective Date: The Settlement embodied in this Stipulation of
11 Settlement shall become effective ("Effective Date") when all of the following events have
12 occurred: (i) this Stipulation of Settlement has been executed by all Parties and by counsel for
13 the Class and Defendant; (ii) the Court has given preliminary approval to the Settlement; (iii)
14 the notice has been given to the Settlement Class, providing them with an opportunity to opt out
15 of the Settlement; (iv) the Court has held a formal fairness hearing and entered a final order and
16 judgment certifying the Settlement Class and finally approving this Stipulation of Settlement;
17 and (v) the later of the following events: when the period for filing any appeal, writ or other
18 appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other
19 appellate proceeding having been filed; the date the Court of Appeal or the California Supreme
20 Court has rendered a final ruling affirming the trial court's final approval of the settlement
21 without material modification. In this regard, it is the intention of the Parties that the Settlement
22 shall not become effective until the Court's order approving the Settlement is completely final,
23 and there is no further recourse by an appellant or objector who seeks to contest the Settlement.
24 It is further agreed by the Parties that this Settlement will not become effective if Defendants,
25 contrary to Paragraph 13 above, are required to pay more than the total amount of their
26 maximum total liability under the Settlement as set forth in Paragraph 13 under any
27 circumstances. It is further agreed by and between the Parties that this Settlement shall not
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1 become effective, and Defendants shall not have any obligation (monetary or otherwise) under
2 the terms of this Settlement, unless and until any objections, writs and/or appeals, and any rights
3 of appeal with respect to any objections or the judgment, have been finally exhausted and
4 resolved upholding the terms of this Settlement.

5 c. Maximum Settlement Amount, and Net Settlement Amount: To
6 implement the terms of this Settlement, Defendants agrees to pay \$1,900,000.00, (“Maximum
7 Settlement Amount”). The Parties agree the entire Maximum Settlement Amount will be paid
8 out by Defendants without reversion. The Parties agree that the Maximum Settlement Amount
9 is premised on the understanding that as of June 5, 2018, the total putative class members
10 eligible to participate in the Settlement is approximately 754 and the total qualifying workweeks
11 is estimated to be 75,763. If the total number of putative class members or workweeks exceed
12 the original amount by more than ten percent (10%), Plaintiff may void this Agreement;
13 however, the Parties will meet and confer in good faith on this issue before exercising this
14 option. At no time shall Defendants have the obligation to segregate the funds comprising the
15 Maximum Settlement Amount, and Defendants shall retain exclusive authority over and
16 responsibility for those funds subject to the disbursement of funds necessary for payment of
17 Settlement Awards, approved attorneys’ fees, approved costs, approved Service Award to the
18 Class Representative, claims administration fees and expenses, and any other payments
19 provided by this Settlement. The Settlement Awards paid to Class Members, the attorneys’ fees
20 and costs to Class Counsel, the Enhancement Award to the Class Representative, the fees and
21 expenses of the Claims Administrator, and any other payments provided by this Settlement,
22 shall be paid out of the Maximum Settlement Amount. The “Net Settlement Amount,” the
23 amount available for potential distribution to Class Members, shall be calculated by deducting
24 from the Maximum Settlement Amount, (i) Class Counsel’s attorneys’ fees and costs, (ii) the
25 Enhancement Award, and (iii) the fees and expenses of the Claims Administrator, as described
26 further below.
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1 i. Settlement Awards to Class Members: Settlement Awards to
2 Class Members will be determined based on the number of weeks worked by all Class Members
3 during the Class Period based on information provided by Defendant. The workweeks will be
4 calculated by Defendants or the Claims Administrator for Class Members by dividing the total
5 days employed as a Class Member during the Class Period by seven. Partial workweeks will
6 not be counted, which means the final work week number will be rounded down to the last full
7 work week; however, if a Class Member worked only one day during the entirety of the Class
8 Period, such Class Member will be credited with having worked one work week for purposes of
9 this Settlement. Defendants' workweeks data will be presumed to be correct, unless a particular
10 Class Member proves otherwise to the Claims Administrator by credible written evidence. All
11 workweek disputes will be resolved and decided by the Claims Administrator, and the Claims
12 Administrator's decision on all workweek disputes will be final. The amount to be paid per
13 workweek to eligible Class Members will be calculated by the Claims Administrator by dividing
14 the Net Settlement Amount by the number of workweeks worked by all Class Members; any
15 person who opts out of the Settlement is not a Class Member, and is ineligible to object to the
16 Settlement or to participate in the Settlement.
17

18 ii. Allocation of Settlement Awards: The Parties have agreed, based
19 on the allegations in the Action, that individual Settlement Awards payable to eligible Class
20 Members will be allocated from the Net Settlement Amount and paid out as follows: (1) thirty-
21 three percent (33%) will be allocated to alleged unpaid wages for which IRS Forms W-2 will
22 issue; (2) sixty-seven percent (67%) will be allocated to alleged unpaid penalties and alleged
23 unreimbursed business expenses and unpaid interest for which IRS Forms 1099-MISC will
24 issue.
25

26 iv. Settlement Awards Do Not Trigger Additional Benefits: All
27 Settlement Awards to Class Members shall be deemed to be income to such Class Members
28 solely in the year in which such awards are actually received by the Class Members. It is
expressly understood and agreed that the receipt of such Settlement Awards will not entitle any

1 Class Member to additional compensation or benefits under any company bonus, contest or
2 other compensation or benefit plan or agreement in place during the period covered by the
3 Settlement, nor will it entitle any Class Member to any increased retirement, 401(k) benefits or
4 matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the
5 Settlement Awards provided for in this Agreement are the sole payments to be made by
6 Defendants to the Class Members in connection with this Settlement, and that the Class
7 Members are not entitled to any new or additional compensation or benefits as a result of having
8 received the Settlement Awards (notwithstanding any contrary language or agreement in any
9 benefit or compensation plan document that might have been in effect during the period covered
10 by this Settlement).

11 v. Attorneys' Fees and Litigation Costs: Subject to Court approval
12 or modification, Defendants further agree to pay Class Counsel's attorneys' fees and litigation
13 costs as set forth in Paragraph 16 below.

14 vi. Class Representative: The Parties agree to the designation of
15 Plaintiff as "Class Representative." Subject to Court approval, Defendants agree to pay Plaintiff
16 a Service Payment at no additional cost to the Released Parties, and subject to Class
17 Representative's execution of a separate and confidential general release of all claims under
18 California Code of Civil Procedure Section 1542. The Service Payment cannot exceed
19 \$7,500.00, and is in addition to any claimed individual Settlement Award to which Plaintiff is
20 entitled. The Service Payment is to be part of, and to be deducted from, the Maximum
21 Settlement Amount. Defendants or the Claims Administrator will issue an IRS Form 1099-
22 MISC for the Enhancement Award to the Plaintiff for Plaintiff's service as Class
23 Representative, and Plaintiff will be solely responsible for correctly characterizing this
24 compensation for tax purposes and for paying any taxes on the amounts received and shall
25 indemnify and hold harmless Defendants for failure to do so. Should the Court approve a
26 Service Payment to the Class Representative in an amount less than that set forth above, the
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1 during the Class Period, and will calculate the amounts due to Class Members in accordance
2 with this Stipulation of Settlement. The Claims Administrator shall report, in summary or
3 narrative form, the substance of its findings. The Claims Administrator shall be granted
4 reasonable access to Defendants' records to perform its duties. At the request of Defendants,
5 and upon receipt of funds from Defendants, the Claims Administrator will issue and send out
6 Settlement Award checks to Class Members. Tax treatment of the Settlement Awards will be as
7 set forth herein, and in accordance with state and federal tax laws. All disputes relating to the
8 Claims Administrator's performance of its duties shall be referred to the Court, if necessary,
9 which will have continuing jurisdiction over the terms and conditions of this Stipulation of
10 Settlement until all payments and obligations contemplated by this Stipulation of Settlement
11 have been fully carried out.

12 ATTORNEYS' FEES AND LITIGATION COSTS

13
14 16. Defendants agree not to oppose an application for attorneys fees not to exceed
15 thirty-five percent (35%) of the Maximum Settlement Amount, or in other words up to
16 \$665,000, and attorneys' costs currently estimated at \$20,000, from the Maximum Settlement
17 Amount. Defendants will not object to Class Counsel's application for attorneys' fees and
18 litigation costs up to these amounts. The amounts set forth above will cover all work performed
19 and all fees and costs incurred to date, and all work to be performed and all fees and costs to be
20 incurred in connection with the approval by the Court of this Stipulation of Settlement, the
21 administration of the Settlement, and obtaining the final judgment. Should Class Counsel
22 request lesser amounts, or should the Court approve lesser amounts for attorneys' fees and
23 litigation costs, the difference between the lesser amounts and the maximum amounts set forth
24 above shall be added to the Net Settlement Amount.

25 17. The attorneys' fees and litigation costs approved by the Court shall be paid to
26 Class Counsel no later than twenty (20) calendar days following the Effective Date.
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1 returned envelope. If there is no forwarding address, the Claims Administrator will do an
2 NCOA check and will skip-trace return mail and re-mail within five (5) days of receipt using the
3 Class Member's social security number; this search will be performed only once per Class
4 Member by the Claims Administrator. Upon completion of these steps by the Claims
5 Administrator, Defendants and the Claims Administrator shall be deemed to have satisfied their
6 obligations to provide the Notice of Pendency of Class Action and Settlement to the affected
7 member of the Settlement Class. The affected member of the Settlement Class shall remain a
8 member of the Settlement Class and shall be bound by all the terms of the Stipulation of
9 Settlement and the Court's Order and Final Judgment.

10 c. The Notice of Pendency of Class Action and Settlement shall also
11 identify the procedures for opting out of or objecting to the Settlement.

12 d. Class Counsel shall provide to the Court, at least sixteen (16) Court days
13 before the final fairness hearing, an initial declaration by the Claims Administrator of due
14 diligence and proof of mailing with regard to the mailing of the Notice of Pendency of Class
15 Action and Proposed Settlement.

16 SETTLEMENT AWARDS

17 19. Settlement Awards shall remain valid and negotiable for one hundred eighty
18 (180) calendar days from the date of their issuance; the Parties agree the Claims Administrator
19 will send one reminder notice to all Class Members who have not cashed the Settlement Award
20 thirty (30) calendar days prior to the deadline; upon the deadline to cash the Settlement
21 Awards, the checks will automatically be cancelled by the Claims Administrator if not cashed
22 by the Class Member within that time, at which point the Class Member's claim will be
23 deemed void and of no further force or effect, and the Class Member's claim will remain
24 released by the Settlement. The Settlement Awards provided to Class Members shall
25 prominently state the expiration date or a statement that the checks will expire in one hundred
26 eighty (180) days, or alternatively, such a statement may be made in a letter accompanying the
27 check. Expired Settlement Awards will not be reissued, except for good cause and as mutually
28

1 agreed by the Parties in writing. Any residue from uncashed Settlement Awards after the
2 expiration date will be paid out as follows: (1) twenty-five percent to the State Treasury for
3 deposit in the Trial Court Improvement and Modernization Fund, established in Section 77209
4 of the Government Code, and subject to appropriation in the annual Budget Act for the Judicial
5 Council to provide grants to trial courts for new or expanded collaborative courts or grants for
6 Sargent Shriver Civil Counsel; (2) twenty-five percent to the State Treasury for deposit into the
7 Equal Access Fund of the Judicial Branch, to be distributed in accordance with Sections 6216
8 to 6223, inclusive, of the Business and Professions Code, except that administrative costs shall
9 not be paid to the State Bar or the Judicial Council from this sum; and (3) fifty percent to the
10 Los Angeles Legal Aid Society—Employment Law Center, as the *cy pres* recipient pursuant to
11 Code of Civil Procedure section 384(b)(3)(C). Upon completion of its calculation of
12 payments, the Claims Administrator shall provide Defendants with a report listing the amount
13 of all payments to be made to each Class Member. Defendants, on behalf of the Released
14 Parties, will pay to the Claims Administrator the amount claimed under the Settlement, up to
15 the Maximum Settlement Amount, after the Settlement becomes effective as defined in
16 Paragraph 14, within 10 calendar days of the Effective Date. The Claims Administrator shall
17 disburse the payments in accord with Paragraph 14, within 20 calendar days of the Effective
18 Date. The Claims Administrator will be responsible for making appropriate deductions,
19 calculating and reporting the employer payroll taxes on the Settlement Awards, paying to Class
20 Counsel any Court-approved attorneys' fees and litigation costs, paying to the Class
21 Representative any Court-approved Enhancement Award, meeting tax reporting obligations,
22 and for issuing the individual Settlement Awards to Class Members. Proof of payment will be
23 filed with the Court and provided to Class Counsel and Defendants' Counsel within ninety (90)
24 calendar days from the Effective Date.
25

26 OPTING OUT OF / OBJECTING TO THE SETTLEMENT

27 20. Opting Out of the Settlement. For those Class Members who do not wish to
28 participate in the Settlement, such Class Members may exclude themselves by submitting a

1 its respective officers, directors, employees, partners, shareholders, and agents, and any other
2 successors, assigns, or legal representatives (collectively “Released Parties”), from any and all
3 claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees,
4 damages, action or causes of action of any nature under any state law, that were or could have
5 been asserted based on the facts and allegations made in the Action, as to the Class Members,
6 including California Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1174,
7 1194, 1198, 2800, 2802, California Industrial Commission Wage Orders, Cal. Code Regs., Title
8 8, section 11040, *et seq.*, California Business and Professions Code sections 17200, *et seq.*, as
9 well as federal claims arising under the Fair Labor Standards Act, (FLSA) 29 U.S.C. § 203, if
10 approved by the Court. This includes all claims for alleged unpaid overtime or double time
11 wages, minimum wages, timely payment of wages at separation, meal periods and meal period
12 premiums, rest periods and rest period premiums, off-the-clock work, business expenses, wage
13 statements, payroll records and recordkeeping, unfair business practices, unlawful business
14 practices, fraudulent business practices, class, collective and representative actions, injunctive
15 relief, declaratory relief, accounting, punitive damages, liquidated damages, waiting-time
16 penalties, interest, fees, costs, as well as all other claims and allegations alleged in the Action,
17 from October 31, 2013 through the date the Court preliminarily approves the settlement or sixty
18 (60) days from June 5, 2018, whichever date is earlier. (collectively “Released Claims”).
19 Expressly excluded from the release are claims for retaliation, discrimination, unemployment
20 insurance, disability, workers compensation, and claims outside the Released Claims. In
21 addition, the Class Representative and the Settlement Class, and each member of the Class who
22 has not submitted a valid Request for Exclusion, is forever barred and enjoined from instituting
23 or accepting damages or obtaining relief against the Released Parties for any period from
24 October 31, 2013 through the date of preliminary approval or sixty (60) days from June 5, 2018,
25 whichever date is earlier, relating to the Released Claims.
26

27 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**
28

1 23. Plaintiff shall promptly submit this Stipulation of Settlement to the San
2 Bernardino County Superior Court in support of Plaintiff's Motion for Preliminary Approval
3 and determination by the Court as to its fairness, adequacy and reasonableness. Promptly upon
4 execution of this Stipulation of Settlement, Plaintiff shall apply to the Court for the entry of an
5 order preliminarily approving the Settlement, requesting the following:

6 a. Scheduling a fairness hearing on the question of whether the proposed
7 Settlement, including payment of attorneys' fees and litigation costs, costs of administration and
8 the Class Representative's Enhancement Award should be finally approved as fair, reasonable
9 and adequate as to the members of the Settlement Class;

10 b. Certifying a Settlement Class, with Plaintiff Luis Carlos Deluna as Class
11 Representative, and Heather Davis, of Protection Law Group LLP and Edwin Aiwazian of
12 Lawyers *for* Justice as Class Counsel;

13 c. Approving as to form and content the proposed Notice of Pendency of
14 Class Action and Proposed Settlement;

15 d. Approving the manner and method for Class Members to request
16 exclusion from the Settlement as contained herein and within the Notice of Pendency of Class
17 Action and Proposed Settlement;

18 e. Directing the mailing of the Notice of Pendency of Class Action and
19 Proposed Settlement by first class mail to the Class Members; and

20 f. Preliminarily approving the Settlement subject only to the objections of
21 Class Members and final review by the Court; and

22 g. Enjoining Plaintiff and all Class Members from filing or prosecuting any
23 other cases, claims, suits or administrative proceedings (including filing claims with the
24 Division of Labor Standards Enforcement of the California Department of Industrial Relations)
25 regarding the Released Claims unless and until such Class Members have filed valid Requests
26 for Exclusion with the Claims Administrator and the time for objections with the Claims
27 Administrator has elapsed.
28

1 Counsel shall, with the assistance and cooperation of Defendants and its counsel, take all
2 necessary steps to secure the Court's final approval of this Stipulation of Settlement.

3 27. The Parties and their respective counsel agree that they will not attempt to
4 encourage or discourage Class Members from filing Requests for Exclusion.

5 NO PRIOR ASSIGNMENTS

6 28. The Parties and their counsel represent, covenant and warrant that they have not
7 directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer or
8 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
9 action or right herein released and discharged except as set forth herein.

10 NO ADMISSION

11 29. Nothing contained herein, nor the consummation of this Stipulation of
12 Settlement, is to be construed or deemed an admission of liability, culpability, negligence or
13 wrongdoing on the part of Defendant. Each of the Parties hereto has entered into this
14 Stipulation of Settlement solely with the intention to avoid further disputes and litigation with
15 the attendant inconvenience and expenses.

16 DISPUTE RESOLUTION

17 30. The Parties agree that any dispute relating to the terms of the settlement shall be
18 resolved by Judge Raul A. Ramirez.

19 NOTICES

20 31. Unless otherwise specifically provided herein, all notices, demands or other
21 communications given hereunder shall be in writing and shall be deemed to have been duly
22 given as of the third business day after mailing by United States registered or certified mail,
23 return receipt requested, addressed as follows:
24

25 **To Plaintiff and the Settlement Class:**

26 Heather Davis, Esq.
27 PROTECTION LAW GROUP LLP
28 136 Main Street, Suite A

1 El Segundo, CA 90245

2 **To Defendant:**

3 Heather Sager
4 VEDDER PRICE (CA), LLP
5 275 Battery Street, Suite 2464
6 San Francisco, CA 94111

7 **NO PUBLIC COMMENT**

8 32. The Class Representative and Class Counsel will not make any public comment
9 about the Action or the Settlement, except by public court filings seeking preliminary and final
10 Court approval of the Settlement; the Parties will use their best efforts to reach agreement on all
11 Court filings. Class Counsel will take all steps necessary to ensure the Class Representative is
12 aware of the restriction against public comment of the Settlement.

13 **CONSTRUCTION**

14 33. The Parties hereto agree that the terms and conditions of this Stipulation of
15 Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and
16 this Stipulation of Settlement shall not be construed in favor of or against any party by reason of
17 the extent to which any party or his, her or its counsel participated in the drafting of this
18 Stipulation of Settlement.

19 **CAPTIONS AND INTERPRETATIONS**

20 34. Paragraph titles or captions contained herein are inserted as a matter of
21 convenience and for reference, and in no way define, limit, extend or describe the scope of this
22 Stipulation of Settlement or any provision of it. Each term of this Stipulation of Settlement is
23 contractual and not merely a recital.

24
25
26 **MODIFICATION**

1 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
2 Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s)
3 set forth below:
4

5 **Plaintiff and Class Representative**

6 Dated: 06/28/2018

Luis Carlos Deluna

LUIS CARLOS DELUNA

8 **Defendants**

9 Dated: 6/28/18

AMERIT FLEET SOLUTIONS, INC.
KELLEY AMERIT FLEET SERVICES

11 By: 
12 Trang Castellanos, Director Human Resources

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

DeLuna. v. Amerit Fleet Solutions, Inc., et al.
San Bernardino Superior Court, Case No. CIVDS1721564

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To: All current and former non-exempt fleet maintenance employees who were employed by Amerit Fleet Solutions, Inc. or Kelley Amerit Fleet Service in California between October 31, 2013 and [Date of Preliminary Approval].
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BASIC INFORMATION

1. What is this settlement about?

A lawsuit was commenced by a former employee of Defendants Amerit Fleet Solutions, Inc. and Kelly Amerit Fleet Services (“Defendants”) on October 31, 2017. The case is currently pending the San Bernardino County Superior Court, Case No. CIVDS1721564.

The lawsuit claims that Defendants did not provide compliant meal and rest periods and associated premium pay, did not properly pay all overtime and minimum wage compensation due and owing, did not provide accurate wage statements, did not timely pay all wages during employment and all wages owed at termination of employment, did not maintain accurate records, and did not reimburse employees for business expenses incurred on behalf of Defendants. The lawsuit also seeks associated penalties and relief for unfair business practices. The lawsuit claims that the Defendants violated the California Labor Code and the California Business and Professions Code, entitling Class Members to, *inter alia*, damages, penalties and restitution. Defendants deny all alleged violations and deny that they owe Class Members any remedies. The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case Luis Carlos DeLuna, also known as “Plaintiff”), sue on behalf of people who appear to have similar claims (in this case all individuals in the state of California who worked for Defendants as hourly-paid or non-exempt employees at any time from October 31, 2013 through [Date of Preliminary Approval]). All these people are referred to here as Class Members. One court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The San Bernardino Superior Court is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiffs, the Class, or Defendants. There has been no finding of any wrongdoing by Defendants. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation of Settlement and Release (“Settlement Agreement” or “Settlement”).

On _____, the Court granted preliminary approval of the Settlement and appointed Plaintiff Luis Carlos DeLuna as Class Representative and appointed their attorneys LAWYERS *for* JUSTICE, P.C. and PROTECTION LAW GROUP, LLP as counsel for the Class (“Class Counsel”).

The Class Representatives and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendants as an hourly-paid or non-exempt fleet maintenance employee in the state of California at any time between October 31, 2013 and [DATE OF PRELIMINARY APPROVAL]

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendants will have to pay a maximum of One Million, Nine Hundred Thousand Dollars and Zero Cents (\$1,900,000.00) (“Maximum Settlement Amount”).

Net Settlement Amount: the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid Requests for Exclusion (“Class Members”), is the Maximum Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 35% of the Gross Settlement Amount or Six Hundred Sixty-Five Thousand Dollars and Zero Cents (\$665,000.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00);
- C. **Enhancement Payments to the Class Representative** in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Luis Carlos DeLuna;
- D. **Settlement Administration Costs** which are currently estimated to be \$13,000.

The amount of money remaining after these payments, the Net Settlement Amount, is the amount that will be distributed to Class Members if the Settlement is granted final approval by the Court.

The portion of the Net Settlement Amount that you are eligible to claim (“Estimated Settlement Share”) will be determined on a *pro rata* basis, based on the number of weeks you worked in California as an hourly-paid or non-exempt employee of Defendants from October 31, 2013 through [DATE OF PRELIMINARY APPROVAL] (“Workweeks”).

Your Estimated Settlement Share will be apportioned as thirty-three percent (33%) wages, sixty-seven percent (67%) interest and penalties. The wage portion of the Estimated Settlement Share will be subject to withholding for the employee’s share of taxes, and will be reported on a W-2 Form (Defendants will pay the employer’s taxes and withholdings separately for, and in addition to the Gross Settlement Amount). The penalties and interest portions will not be subject to any withholdings and will be reported on an IRS Form 1099.

Your Estimated Settlement Share is \$XXX.XX. The amount of the payment may change depending on the number of timely and valid Requests for Exclusions submitted in the Settlement, if any.

HOW TO GET A PAYMENT FROM THE NET SETTLEMENT AMOUNT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Net Settlement Amount.

7. What am I giving up if I do not opt-out of the Settlement?

Upon the Effective Date, Class Members who do not timely submit a Request for Exclusion will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged Defendants, and all their respective current and former parents, subsidiaries, predecessors and successors, and affiliated entities, and each of its respective officers, directors, employees, partners, shareholders, and agents, and any other successors, assigns, or legal representatives (collectively “Released Parties”) from any and all California state law wage-and-hour claims, rights, demands, liabilities, and/or causes of action arising from any and all acts and occurrences asserted in the Complaint. The release also includes claims arising under the federal Fair Labor Standards Act (FLSA).

The release of Released Claims pertains to the time period of October 31, 2013 through [DATE OF PRELIMINARY APPROVAL].

The Released Claims do not include claims for workers’ compensation benefits, retaliation, discrimination, or any claims that may not be released by law.

EXCLUDING YOURSELF FROM THE RELEASE OF CLAIMS

If you want to keep the right to sue or continue to sue Defendants with respect to the Released Claims you must submit a Request for Exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment of a portion of the Net Settlement Amount.

8. What if I do not want to release my claims?

To exclude yourself from the release of Released Claims you must submit a written Request for Exclusion. You must include your name, address, dates you worked for Defendants as a non-exempt or hourly-paid employee, and your signature. Your Request for Exclusion must also include the following statement, or something similar: “I received notice of the proposed settlement in *Deluna v. Amerit Fleet Solutions, Inc. et al* San Bernardino Superior Court Case No. CIVDS1721564 and wish to be excluded from the Settlement of Released Claims. I understand that in asking to be excluded, I will not receive any portion of the Net Settlement Amount approved by the Court in this case.”

The written Request for Exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [30 calendar days after mailing of notice]. You cannot exclude yourself by phone.

[Claims Administrator]

[Address]

[Fax No.]

9. If I don’t exclude myself, can I sue Defendants for the same thing later?

No. Unless you submit a Request for Exclusion, you give up the right to sue Defendants and Released Parties for Released Claims. If you have a pending lawsuit involving Released Claims, speak to your lawyer in that lawsuit immediately.

10. If I exclude myself, can I get money from this settlement?

No. But if you submit a timely and valid Request for Exclusion, you retain any right that you may have to sue, continue to sue, or be part of a different lawsuit against Released Parties for Released Claims

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved *LAWYERS for JUSTICE*, P.C. and PROTECTION LAW GROUP, LLP as Class Counsel. The firms' contact information is:

LAWYERS for JUSTICE, PC
Edwin Aiwazian, Esq.
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Facsimile: (818) 265-1021

PROTECTION LAW GROUP LLP
Heather Davis, Esq.
136 Main Street, Suite A
El Segundo, California 90245
Telephone: (424) 290-3095
Facsimile: (866) 264-7880

12. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees of up to \$665,000.00 and reimbursement of litigation cost/expenses of up to \$20,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

13. How do I tell the Court if I don't like the settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Claims Administrator no later than [30 calendar days after mailing of notice], or appear at the Final Approval Hearing on [DATE]. If you object to the settlement you must state the specific reason for your objection including any legal support, as well as your full name, date of birth, and the dates you worked as an hourly-paid or non-exempt employee of Defendants.

14. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend and you may ask to speak, but you do not have to attend.

15. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at [_____] p.m.] on [_____, 2018], at the San Bernardino County Superior Court located at 247 W. 3rd Street, San Bernardino, CA 92415 in Department S26.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

16. Do I have to come to the hearing?

No. If you agree to the Settlement, or filed and served an objection or Request for Exclusion in compliance with the requirements set forth above, you do not have to come to Court to talk about it. However, you may attend and speak, or you may also retain your own lawyer at your expense to attend on your behalf.

17. How will I learn if the settlement was approved

A notice of final judgment will be posted on the Claims Administrator website located at www._____.com

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you do nothing, you receive your share of the Net Settlement Amount, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or Released Parties about the Released Claims, ever again.

GETTING MORE INFORMATION

19. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is attached as Exhibit ___ to _____. You can get a copy of the Settlement Agreement by viewing the settlement located on the Claims Administrator's website at _____ or by contacting the Settlement Administrator or Class Counsel.

20. What if my information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by using the Claim Form and/or by contacting the Settlement Administrator.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE