

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JEFFREY MAYER, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

DRIVER SOLUTIONS, INC., DRIVER
SOLUTIONS, LLC, DRIVER HOLDINGS, LLC,
and C&S ACQUISITION, INC.,

Defendants.

10-CV-1939 (JCJ)

**MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT,
CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT
OF PLAINTIFF’S COUNSEL AS CLASS COUNSEL, AND APPROVAL OF
THE PROPOSED NOTICE OF SETTLEMENT AND CLASS ACTION
SETTLEMENT PROCEDURE**

For the reasons set forth in the Memorandum of Law in Support of Plaintiff’s Motion for Preliminary Approval of the Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiff’s Counsel as Class Counsel, and Approval of the Proposed Notice of Settlement and Class Action Settlement Procedure (“Motion for Preliminary Approval”) and in the Declaration of Rachel Bien and the accompanying exhibits (“Bien Decl.”), Plaintiff respectfully requests that the Court enter an Order:

- (1) granting preliminary approval of the Joint Settlement and Release (“Settlement Agreement”), attached as Exhibit B to the Bien Decl.;
- (2) conditionally certifying the proposed settlement class under Fed. R. Civ. P. 23 for purposes of effectuating the settlement;
- (3) appointing Outten & Golden LLP and Community Legal Services, Inc. as Class Counsel;

- (4) approving the Proposed Notice of Settlement of Class Action Lawsuit and Fairness Hearing, attached to the Bien Decl. as Exhibit C, and the Claims Form, attached to the Bien Decl. as Exhibit D, and directing their distribution;
- (5) approving the parties' proposed schedule for final settlement approval; and
- (6) granting such other, further, or different relief as the Court deems just and proper.

Dated: January 17, 2012
New York, New York

Respectfully submitted,
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Defendants.

CLASS ACTION

10-CV-1939 (JCJ)

**[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT, CONDITIONAL CERTIFICATION OF THE
SETTLEMENT CLASS, APPOINTMENT OF PLAINTIFF’S COUNSEL AS CLASS
COUNSEL, AND APPROVAL OF THE PROPOSED NOTICE OF SETTLEMENT AND
CLASS ACTION PROCEDURE**

The above-entitled matter came before the Court on Plaintiff’s Motion for Preliminary Approval of Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiff’s Counsel as Class Counsel, and Approval of the Proposed Notice of Settlement and Class Action Settlement Procedure (“Motion for Preliminary Approval”) (Docket No. 47).

I. Preliminary Approval of Settlement

1. Based upon the Court’s review of the Memorandum of Law in Support of the Motion for Preliminary Approval and the Declaration of Rachel Bien (“Bien Decl.”) and the exhibits attached thereto, the Court grants preliminary approval of the settlement memorialized in the Joint Stipulation of Settlement and Release (“Settlement Agreement”), attached to the Bien Decl. as Exhibit B.

2. The Court concludes that the Settlement Agreement is within the range of possible settlement approval, such that notice to the class is appropriate. *See Smith v. Prof'l Billing & Mgmt. Services, Inc.*, No. 06-4453, 2007 WL 4191749, at *2 (D.N.J. Nov. 21, 2007) (approving settlement where the amount was within a reasonable range); *In re Insurance Brokerage Antitrust Litig.*, Nos. 04-5184, 05-1079, 2007 WL 2589950, at *2 (D.N.J. Sept. 4, 2007) (granting preliminary approval to a class action settlement where the settlement agreement was sufficiently fair, reasonable and adequate).

3. The Court finds that the Settlement Agreement is the result of extensive, arm's-length negotiations by counsel well-versed in the prosecution of Title VII class actions.

4. The assistance of an experienced mediator, Alfred G. Feliu, Esq., reinforces that the Settlement Agreement is non-collusive.

II. Conditional Certification of the Proposed Rule 23 Settlement Class

5. The Court provisionally certifies the following class under Fed. R. Civ. P. 23(e), for settlement purposes ("Settlement Class"):

All Latino and African American individuals who submitted applications to Defendants for a placement with one of the trucking companies for which Defendants recruit inexperienced truck drivers and whom Defendants rejected based on their criminal background between January 24, 2009 and September 30, 2010.

6. Plaintiff meets all of the requirements for class certification under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

7. Plaintiff satisfies Fed. R. Civ. P. 23(a)(1) because there are potentially thousands of class members and, thus, joinder is impracticable. *See Jones v. Commerce Bancorp, Inc.*, No. 05-5600, 2007 WL 2085357, at *3 (D.N.J. July 16, 2007) ("classes of close to one hundred members are sufficient") (citing *Eisenberg v. Gannon*, 766 F.2d 770, 785-86 (3d Cir. 1985)).

8. Plaintiff satisfies Fed. R. Civ. P. 23(a)(2) because Plaintiff and the class members share common issues of fact and law, including whether Defendants' criminal background hiring policy had a disparate impact on African Americans and Latinos and whether it was justified by business necessity. *See Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001) (commonality satisfied where "at least one common question of fact or law exists among the putative class"); *Lanning v. Se. Pennsylvania Transp. Auth.*, 176 F.R.D. 132, 150-51 (E.D. Pa. 1997) (commonality satisfied where "[t]he legality of SEPTA's conduct is central to the claims of all the plaintiffs and prospective class members"); *Webb v. Westinghouse Elec. Corp.*, 78 F.R.D. 645, 652 (E.D. Pa. 1978) (commonality satisfied where all class members were allegedly denied positions based on race).

9. Plaintiff satisfies Fed. R. Civ. P. 23(a)(3) because Plaintiff's and the class members' claims arise from the same course of events – they all applied for entry-level truck driver placements and were denied those placements as a result of Defendants' criminal background hiring policy. They also make the same legal arguments in support of their claims – that Defendants' criminal background policy had a disparate impact on African Americans and Latinos and was not justified by business necessity. *See Lanning*, 176 F.R.D. at 151 (typicality satisfied because "[t]he legal claims of the named plaintiffs and those of the proposed class members are identical" and "the factual circumstances from which the claims of the named plaintiffs and proposed class members arose are strikingly similar"); *Webb*, 78 F.R.D. at 652 (typicality satisfied where plaintiffs were all subject to the same discriminatory personnel policies).

10. Plaintiff satisfies Fed. R. Civ. P. 23(a)(4) because there is no evidence that the Plaintiff's and the class members' interests are at odds. *See Amchem Prods., Inc. v. Windsor*,

521 U.S. 591, 625 (1997) (“The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent.”) In addition, Plaintiff’s counsel are competent and well-versed in employment law and class action law. *See, e.g., Easterling v. Connecticut, Dept. of Corr.*, 265 F.R.D. 45, 51 n.2 (D. Conn. 2010), *modified sub nom. Easterling v. Connecticut Dept. of Corr.*, No. 3:08 Civ. 826, 2011 WL 5864829 (D. Conn. Nov. 22, 2011); *Ralston v. Zats*, No. Civ. 94-3723, 2000 WL 1781590, at *4 (E.D. Pa. Nov. 7, 2000).

11. Plaintiff’s claim for injunctive relief satisfies Rule 23(b)(2) because Defendants applied the criminal background hiring policy uniformly to all members of the class, and thus the class as a whole shares the same interest in obtaining the injunctive relief provided by the settlement – prospective changes to the policy. *See* Bien Decl. Ex. B (Settlement Agreement) ¶ 3.6(A) & Ex. B (Revised Hiring Criteria). *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2557, 180 L. Ed. 2d 374 (2011) (“The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.”) (internal quotation marks omitted).

12. Plaintiff’s claim for monetary damages satisfies Rule 23(b)(3). Common factual allegations and a common legal theory predominate over any factual or legal variations among class members. *See Easterling v. Connecticut Dept. of Corr.*, No. 3:08 Civ. 826, 2011 WL 5864829, at *8 (D. Conn. Nov. 22, 2011); *United States v. City of New York*, 276 F.R.D. 22, 48-49 (E.D.N.Y. 2011).

13. Class adjudication of this case is superior to individual adjudication because it will conserve judicial resources and is more efficient for class members, particularly those who

lack the resources to bring their claims individually. *See Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 632 (3d Cir. 1996).

III. Appointment of Plaintiff's Counsel as Class Counsel

14. The Court appoints Outten & Golden LLP ("O&G") and Community Legal Services, Inc. ("CLS") as Class Counsel because they meet all of the requirements of Fed. R. Civ. P. 23(g).

15. O&G and CLS did substantial work identifying, investigating, litigating, and settling Plaintiff's and the class members' claims, have years of experience prosecuting and settling Title VII class actions, and are well-versed in Title VII and in class action law. *See, e.g., Easterling*, 265 F.R.D. at 51 n.2; *Ralston*, 2000 WL 1781590, at *4.

16. The work that O&G and CLS have performed both in litigating and settling this case demonstrates their commitment to the class and to representing the class's interests.

IV. Class Notice

17. The Court approves the proposed Court-Authorized Notice ("Notice"), which is attached as Exhibit C to the Bien Decl., and directs its distribution to the Class.

18. The content of the Notice fully complies with due process and Fed. R. Civ. P. 23.

19. Pursuant to Fed. R. Civ. P. 23(c)(2)(B), the notice must provide:

the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through counsel if the member so desires; that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and the binding effect of a class judgment on class members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

20. The Notice satisfies each of these requirements and adequately puts class members on notice of the proposed settlement. *See, e.g., In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 511 (W.D. Pa. 2003) (approving class notice that “advised class members of the time and date of the hearing, apprised them of their opportunity to be heard at that time, informed them generally about the litigation and the proposed Settlement, and invited them to contact [the administrator] with any questions they might have concerning the proposed Settlement”).

21. The Court also approves the form of the proposed Claim Form, which is attached as Exhibit D to the Bien Decl.

V. Class Action Settlement Procedure

22. The Court hereby approves the following schedule for final resolution of this matter:

- a. Within 5 days of the date of this Order, Defendants will provide the claims administrator with a list, in electronic form, of the following for all class members: (1) last known address, (2) last known telephone number, (3) date on which Defendants received their application for employment, and (4) information regarding felony criminal history, if such information exists in Defendants’ records (“Class List”);
- b. The claims administrator will mail the Settlement Notice and Claim Form to class members within 10 days after receiving the Class List;
- c. Class members will have 30 days after the date the Settlement Notice is mailed to opt out of or object to the settlement;
- d. Class members will have 60 days to return a Claim Form after the date the Settlement Notice is mailed;
- e. Plaintiff will file a Motion for Final Approval of Settlement no later than 15 calendar days before the Fairness Hearing;
- f. The Court will hold a final fairness hearing on _____ at _____ a.m./p.m. at the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA 19106;

- g. The claims administrator will disburse settlement awards to class members, Class Counsel's Court-approved attorneys' fees and costs, and Plaintiff's service award within 5 days of the Effective Date of the settlement; and
- h. The parties shall abide by all other terms of the Settlement Agreement.

It is so ORDERED this ____ day of _____, 2012.

Honorable J. Curtis Joyner
United States District Judge

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CLASS ACTION

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,
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TABLE OF CONTENTS

INTRODUCTION	1
PROCEDURAL BACKGROUND.....	1
I. Litigation.....	1
II. Discovery and Jurisdictional Motion Practice	2
III. Mediation	3
IV. The Settlement Class.....	4
SUMMARY OF THE SETTLEMENT TERMS.....	4
I. Prospective Relief	4
II. The Settlement Fund	5
III. Release	6
IV. The Claims Process.....	6
V. Allocation Formula	7
VI. The Opt Out and Objection Procedure.....	8
VII. Attorneys’ Fees and Costs	8
VIII. Service Award.....	9
IX. Settlement Claims Administrator.....	9
CLASS ACTION SETTLEMENT PROCEDURE	10
ARGUMENT	12
I. Preliminary Approval of the Settlement Is Appropriate.	12
A. The Parties Participated in Arm’s-Length Negotiations.....	12
B. The Parties Engaged in Extensive Discovery Before Agreeing to Resolve the Case.....	13
C. Plaintiff’s Counsel Is Experienced in Complex Title VII Litigation.....	14
D. After Notice Issues, the Court Will Be in a Better Position to Weigh the Reaction of the Class	14

II.	Conditional Certification of the Rule 23 Class Is Appropriate.....	14
A.	Plaintiff Meets the Requirements of Rule 23(a)	16
	1. Numerosity.....	16
	2. Commonality.....	16
	3. Typicality	18
	4. Adequacy	19
B.	Certification Is Proper Under Rule 23(b)(2) and (b)(3).....	20
	1. Common issues predominate	21
	2. A class action is a superior method of adjudication	22
III.	Plaintiff’s Counsel Should Be Appointed as Class Counsel.....	23
IV.	The Proposed Class Notice Is Appropriate.....	24
	CONCLUSION.....	25

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	14, 19, 21, 22
<i>Bonett v. Educ. Debt Servs.</i> , No. 01-6528, 2003 WL 21658267 (E.D. Pa. May 9, 2003).....	13, 21
<i>Cichonski v. Am. Inventors Corp.</i> , No. 95 Civ. 04079, 1995 WL 657107 (E.D. Pa. Nov. 3, 1995).....	18
<i>Duling v. Gristede's Operating Corp.</i> , 267 F.R.D. 86 (S.D.N.Y. 2010)	14, 19, 23
<i>E. Tex. Motor Freight Sys., Inc. v. Rodriguez</i> , 431 U.S. 395 (1977).....	19
<i>Easterling v. Conn. Dep't of Corr.</i> , 08 Civ. 826, 2011 WL 5864829 (D. Conn. Nov. 22, 2011)	21
<i>Easterling v. Conn. Dep't of Corr.</i> , 265 F.R.D. 45 (D. Conn. 2010).....	19, 23
<i>Eisenberg v. Gannon</i> , 766 F.2d 770 (3d Cir. 1985).....	18
<i>In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.</i> , 55 F.3d 768 (3d Cir. 1995).....	12, 16
<i>Gen. Tel. Co. of Sw. v. Falcon</i> , 457 U.S. 147 (1982).....	16
<i>Georgine v. Amchem Prods., Inc.</i> , 83 F.3d 610 (3d Cir. 1996).....	22
<i>Godshall v. Franklin Mint Co.</i> , No. 01-CV-6539, 2004 WL 2745890 (E.D. Pa. Dec. 1, 2004).....	9
<i>In re Ins. Brokerage Antitrust Litig.</i> , No. MDL 1663, 2007 WL 2589950 (D.N.J. Sept. 4, 2007)	15
<i>In re Janney Montgomery Scott LLC Fin. Consultant Litig.</i> , No. 06-3202, 2009 WL 2137224 (E.D. Pa. July 16, 2009)	9
<i>Jones v. Commerce Bancorp Inc.</i> , C.A. No. 05-5600, 2007 WL 2085357 (D.N.J. July 16, 2007).....	12, 16, 18

<i>Lanning v. Se. Pennsylvania Transp. Auth.</i> , 176 F.R.D. 132 (E.D. Pa. 1997).....	17, 18
<i>In re LifeUSA Holding, Inc.</i> , 242 F.3d 136 (3d Cir. 2001).....	21
<i>Maldonado v. Houstoun</i> , 177 F.R.D. 311 (E.D. Pa. 1997).....	14, 19, 24
<i>In re Nassau County Strip Search Cases</i> , 461 F.3d 219 (2d Cir. 2006).....	22
<i>O’Keefe v. Mercedes-Benz USA, LLC</i> , 214 F.R.D. 266 (E.D. Pa. 2003).....	13
<i>Osgood v. Harrah’s Entm’t, Inc.</i> , 202 F.R.D. 115 (D.N.J. 2001).....	20
<i>In re Prudential Ins. Co. of Am. Sales Practices Litig.</i> , 148 F.3d 283 (3d Cir. 1998).....	14, 17, 19, 21
<i>Ralston v. Zats</i> , No. 94 Civ. 3723, 2000 WL 1781590 (E.D. Pa. Nov. 7, 2000).....	19, 23
<i>Reibstein v. Rite Aid Corp.</i> , 761 F. Supp. 2d 241 (E.D. Pa. 2011).....	13
<i>Seidman v. Am. Mobile Sys., Inc.</i> , 157 F.R.D. 354 (E.D. Pa. 1994).....	18
<i>Smith v. Prof’l Billing & Mgmt. Servs., Inc.</i> , No. 06-4453, 2007 WL 4191749 (D.N.J. Nov. 21, 2007)	12
<i>Stewart v. Abraham</i> , 275 F.3d 220 (3d Cir. 2001).....	17
<i>United States v. City of New York</i> , 276 F.R.D. 22 (E.D.N.Y. 2011)	22
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 131 S. Ct. 2541 (2011).....	17, 20
<i>In re Warfarin Sodium Antitrust Litig.</i> , 391 F.3d 516 (3d Cir. 2004).....	13
<i>Waste Mgmt. Holdings, Inc. v. Mowbray</i> , 208 F.3d 288 (1st Cir. 2000).....	22

Webb v. Westinghouse Elec. Corp.,
78 F.R.D. 645 (E.D. Pa. 1978).....17, 18

Westerfield v. Wash. Mut. Bank,
No. 06 Civ. 2817, 2009 WL 6490084 (E.D.N.Y. June 26, 2009).....14, 19

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Herbert B. Newberg & Alba Conte, 4 *Newberg on Class Actions* (4th ed. 2002)10, 16, 20

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<http://www.eeoc.gov/policy/docs/convict1.html> (last visited Jan. 17, 2012).5

INTRODUCTION

Subject to Court approval, Plaintiff, on behalf of the proposed class, has settled this Title VII class action for \$475,000 and meaningful prospective relief. The settlement resolves Plaintiff's claims on a class-wide basis and satisfies all of the criteria for preliminary settlement approval under federal law.

Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the Joint Stipulation of Settlement and Release ("Settlement Agreement") attached as Exhibit B to the Declaration of Rachel Bien ("Bien Decl.");¹ (2) conditionally certify the proposed class under Federal Rule of Civil Procedure 23; (3) appoint Outten & Golden LLP and Community Legal Services, Inc. as Class Counsel ("Class Counsel"); and (4) approve the Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing ("Settlement Notice"), attached as Exhibit C to the Bien Decl., and the Claim Form, attached as Exhibit D to the Bien Decl., and direct their distribution.

PROCEDURAL BACKGROUND

I. Litigation

Plaintiff Jeffrey Mayer ("Plaintiff") filed a Class Action Complaint on April 30, 2010, and a First Amended Class Action Complaint on July 23, 2010, asserting a disparate impact claim under Title VII of the Civil Rights Act of 1964 ("Title VII") on behalf of a class of African American and Latino job applicants. Bien Decl. Ex. A (Am. Compl.). Plaintiff alleged that Defendants' policy of denying placements to truck driver applicants with criminal histories had a disparate impact on African Americans and Latinos in violation of Title VII. Defendants' policy

¹ Unless otherwise indicated, all exhibits are attached to the Bien Decl.

barred all applicants with felonies within the last ten years, as well as all felonies related to violence or drugs, no matter the time since the conviction. Bien Decl. ¶¶ 15-16.

Plaintiff applied for an entry-level truck driver job by filling out an online application on Defendants' website. Ex. A (Am. Compl.) ¶ 39. During a preliminary telephone interview, Plaintiff was told that his application would not be considered because of a prior felony conviction. *Id.* ¶ 53.

II. Discovery and Jurisdictional Motion Practice

The parties engaged in substantial formal and informal discovery before agreeing to resolve this case. On July 12, 2010, Defendants moved to dismiss the Complaint on the grounds that the court lacked personal jurisdiction over them, that venue was improper, and that they could not be held liable, as an employment agency, under Title VII. Bien Decl. ¶ 17. In response to the motion, Plaintiff filed a First Amended Class Action Complaint on July 23, 2010, which incorporated additional jurisdictional facts. Ex. A (Am. Compl.) ¶¶ 19-30. On July 20, 2010, the Court "so ordered" the parties' stipulation providing for a period of jurisdictional discovery and extending the time for Plaintiff to oppose the motion to dismiss. ECF No. 16.

Before Plaintiff filed his opposition, the parties sought a stay of litigation in order to engage in settlement discussions. Bien Decl. ¶ 20. The Court granted a sixty-day stay on August 13, 2010, followed by another thirty-day stay on October 8, 2010. *Id.* ¶ 21. The Court then agreed to stay litigation until January 21, 2011, so that the parties could continue informal discovery and attempts at negotiation. *Id.* ¶¶ 21-22. During their negotiations, in response to Plaintiff's requests, Defendants produced documents related to the claims, including the criminal background hiring policy, data on the numbers of rejected applicants with criminal histories and the nature of their crimes, and correspondence with the two trucking companies for which

Defendants recruited applicants, USA Truck, Inc. (“USA”) and P.A.M. Transportation Services, Inc. (“PAM”), related to the development and application of the criminal background policy. *Id.* ¶ 28. Defendants also provided information to Plaintiff regarding the role of USA and PAM in devising the criminal background policy and informed them that, after the lawsuit was filed, USA and PAM took over the role of applying the policy to applicants. *Id.* ¶ 20.

The parties were not able to reach a resolution and returned to litigation at the end of January 2011. *Id.* ¶ 22. On February 16, 2011, Plaintiff filed a motion seeking to join USA and PAM as additional Defendants. ECF No. 28. Defendants opposed the motion and re-filed their motion to dismiss the First Amended Class Action Complaint. ECF No. 29. On March 9, 2011, Plaintiff requested that the Court grant him a period of discovery in order to respond to Defendants’ motion to dismiss and support his motion for joinder. The Court granted Plaintiff’s request on April 1, 2011. ECF Nos. 36-37.

Plaintiff propounded interrogatories, document requests, and requests for admissions on Defendants regarding their jurisdictional contacts with Pennsylvania and deposed a Fed. R. Civ. P. 30(b)(6) witness. Bien Decl. ¶ 26. Plaintiff also subpoenaed witnesses from USA and PAM to appear for depositions and to produce documents regarding their knowledge of Plaintiff’s Equal Employment Opportunity Commission (“EEOC”) charge. *Id.* Defendants propounded document requests on Plaintiff and deposed him. *Id.*

III. Mediation

On July 8, 2011, the Court granted the parties’ request for a stay of litigation so that they could revive settlement negotiations. ECF No. 43. In advance of the mediation, at Plaintiff’s request, Defendants produced information that would allow Plaintiff to generate an estimate of damages, including updated data on the number of rejected applicants with criminal

backgrounds, data on the numbers of applicants who graduate from truck driver training, and expected compensation and turnover rates at USA and PAM. Bien Decl. ¶ 31. Plaintiff hired a labor economist, Dr. Marc Bendick, Jr., Ph.D., to assist him to generate a damages model, which he shared with Defendants in advance of the parties' mediation. *Id.* ¶ 32. On October 4, 2011, the parties participated in a 12-hour mediation with an experienced employment law mediator, Alfred G. Feliu, Esq. *Id.* ¶ 33. The parties reached agreement on the material terms of a settlement, including the monetary amount, at the conclusion of the mediation. *Id.* ¶ 34. The parties then negotiated a formal settlement agreement incorporating all terms, which all parties have signed. *Id.* ¶ 35.

IV. The Settlement Class

The proposed settlement class consists of all Latino and African American individuals who submitted applications to Defendants for a placement with one of the trucking companies for which Defendants recruit inexperienced truck drivers and whom Defendants rejected based on their criminal background between January 24, 2009 and September 30, 2010. Ex. B (Settlement Agreement) ¶ 1.3. Defendants have represented that approximately 5,516 applicants were rejected based on their criminal background during the class period. Bien Decl. ¶ 37.

SUMMARY OF THE SETTLEMENT TERMS

I. Prospective Relief

As a condition of settlement, Defendants agreed to modify the criminal background hiring policy that they apply to applicants. Ex. B (Settlement Agreement) ¶ 3.6(A). Under the revised policy, Defendants cannot bar applicants with felonies that are more than 10 years old or misdemeanors that are more than 5 years old, unless they are for certain specific crimes, which are identified in Exhibit B to the Settlement Agreement. *Id.* Ex. B. For those specifically

designated crimes, as well as for all felony and misdemeanor convictions that are less than 10 years old or less than 5 years old, respectively, Defendants must consider, in addition to the criminal history, the following mitigating factors:

- a. The nature and gravity of the conviction(s);
- b. Whether there is a direct relationship between the conviction(s) and the specific duties and responsibilities of the job sought such that the conviction is substantially likely to bear on the applicant's suitability for the job;
- c. Any information produced by the applicant in regard to his rehabilitation and good conduct since the date of the conviction(s);
- d. The age of the applicant at the time of the occurrence of the conviction(s);
- e. The length of time that has passed since the date of the conviction(s); and
- f. The nature of the job held or sought.

The Equal Employment Opportunity Agency has endorsed the above factors in guidance to employers as a means to eliminate the discriminatory effects of hiring policies that prohibit individuals with criminal records from obtaining employment. *See* The U.S. Equal Employment Opportunity Commission, *EEOC Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964*, available at: <http://www.eeoc.gov/policy/docs/convict1.html> (last visited Jan. 17, 2012).

II. The Settlement Fund

The Settlement Agreement creates a fund of \$475,000 ("the Fund"). Ex. B (Settlement Agreement) ¶ 1.21. The Fund covers class members' awards, Court-approved attorneys' fees and costs, a Court-approved service payment to Plaintiff, the claims administrator's fees, and any fees associated with distributing and liquidating the settlement payment. Other than the mediator's fees, Defendants will not be required to pay more than \$475,000. *Id.* ¶ 3.1(A). Defendants will deposit the Fund into an escrow account within 21 days of the Court's Order Granting Preliminary Approval. *Id.* ¶ 3.1(B). None of the Fund will revert to Defendants. *Id.* ¶ 3.4(F).

III. Release

The Settlement Agreement provides that every class member who does not timely opt out of the settlement will release Defendants from the claims that were brought in the litigation and all state and municipal claims based on the same facts and circumstances. *Id.* ¶ 3.7(A).

IV. The Claims Process

The settlement provides for a claims process under which class members will have 60 days to return a two-page claim form in order to be eligible to obtain a monetary recovery. Ex. B (Settlement Agreement) ¶ 2.7(A). The claim form asks class members to self-identify by race and ethnicity, answer questions regarding the nature of their criminal history, and provide information regarding whether they mitigated their damages by securing alternative employment after being rejected by Defendants. Ex. D (Claim Form). Class members will be eligible to share in the monetary recovery if they: (1) self-identify as Latino or African American, and (2) were not convicted of a crime within the last 10 years, or (3) were convicted of a crime within the last 10 years, but not for: (a) driving under the influence within the last 5 years, (b) a felony involving use of a motor vehicle, (c) a felony involving death or serious bodily injury to another person, or (d) felony theft, robbery, or fraud. Ex. B (Settlement Agreement) ¶ 3.4(C).

The claims administrator will be responsible for reviewing claim forms that class members return for completeness and eligibility. *Id.* ¶ 2.1. If a class member submits an incomplete claim form, the claims administrator will send a letter to the class member explaining the reason that the submitted Claim Form is incomplete and giving the class member thirty days to cure the omission. *Id.* Class Counsel may follow up with the class member to try and assist him or her in completing the information. *Id.*

The claims administrator will cross-check the criminal history information self-reported in the Claim Form with the information contained in Defendants' records. *Id.* ¶ 2.7(C). Where a discrepancy is found between the self-reported information and that which exists in Defendants' records, the claims administrator will inform Class Counsel within 2 business days of identifying the discrepancy. *Id.* Class Counsel may then attempt to verify the information, by interviewing the claimant and/or requesting that the claimant produce evidence supporting the information he or she self-reported. *Id.* Class Counsel will then determine whether the claimant is approved as a class member. *Id.*

Class Counsel may challenge a claimant's eligibility to recover where they have a good faith belief that a claimant's submission may be invalid. *Id.* ¶ 2.7(E). Class Counsel also retain the right to challenge the claims administrator's determinations regarding approval or denial of each Claim Form and the amount the claims administrator proposes to pay to each Claimant. *Id.*

V. Allocation Formula

Under the settlement agreement, each claimant whom the claims administrator determines is eligible for a payment will earn 1 point for each week for which he or she was not employed between January 24, 2009 and the present. *Id.* ¶ 3.4(D). To calculate each approved claimant's proportionate share, the claims administrator will: (a) add all points for all approved claimants together; (b) divide the number of points for each approved claimant by the total number to obtain each approved claimant's portion; and (c) multiply each approved claimant's portion by the net settlement fund to determine each approved claimant's award. *Id.*

If sufficient funds remain in the escrow account after the payments described above have been distributed to make a second distribution, the claims administrator will redistribute the

money among approved claimants in pro-rata payments based on the same formula used for the initial distribution. *Id.* ¶ 3.4(F).

VI. The Opt Out and Objection Procedure

The settlement provides that class members may request exclusion from the class by opting out. Ex. B (Settlement Agreement) ¶ 2.6(A). To do so, class members must mail a written, signed statement to the claims administrator that he or she is opting out of the monetary portion of the settlement (“Opt-Out Statement”). *Id.* Opt-Out Statements must be mailed 30 days after the claims administrator mails the Notice. *Id.* There will be additional mailings for class members whose notices are returned undeliverable by the post office, assuming updated addresses can be found. *Id.* ¶ 2.6(A).

The settlement also provides that class members may present objections to the proposed settlement at the Fairness Hearing, if they first submit their objection in writing. *Id.* ¶ 2.8(A). Objectors may appear at the Fairness Hearing, either in person or through counsel, but need not appear in order to make an objection. *Id.* ¶ 2.8(A) & (B). An objector who wishes to appear at the Fairness Hearing must state his or her intention to do so at the time of submitting written objections. *Id.* ¶ 2.8(B). Any class member who has requested exclusion may not submit objections to the settlement. *Id.*

VII. Attorneys’ Fees and Costs

Plaintiff’s counsel will seek one-third of the settlement fund as attorneys’ fees and reimbursement of their reasonable costs of no more than \$10,000. *Id.* ¶ 3.2(A). The Court need not rule on fees and costs now. Plaintiff’s counsel will file a motion for approval of fees and costs with their motion for final approval of the settlement. *See* Fed. R. Civ. P. 23(h) & 54(d)(2).

VIII. Service Award

In addition to his individual award under the allocation formula, and subject to Court approval, Plaintiff will seek an additional payment of \$15,000 in recognition of the services he rendered to the class. Ex. B (Settlement Agreement) ¶ 3.3. His services included, but were not limited to, informing counsel of the facts initially and as the case progressed, responding to discovery requests, sitting for a deposition, assisting counsel to prepare for the mediation, attending the mediation, and reviewing and commenting on the terms of the settlement. Bien Decl. ¶ 41. Plaintiff will move for Court approval of his service award simultaneously with his motion for final approval of the settlement. *See In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06 Civ. 3202, 2009 WL 2137224, at *12 (E.D. Pa. July 16, 2009) (approving service awards of \$20,000 each where the named plaintiffs were deposed, responded to discovery requests, and assisted counsel to understand the relevant facts); *Godshall v. Franklin Mint Co.*, No. 01 Civ. 6539, 2004 WL 2745890, at *8 (E.D. Pa. Dec. 1, 2004) (awarding \$20,000 each to two named plaintiffs in employment class action).

IX. Settlement Claims Administrator

Plaintiff has retained Kurtzman Carson Consultants LLC, an experienced class action claims administrator to administer the settlement. Bien Decl. ¶ 42. The claims administrator will be responsible for mailing the settlement notice and claims form to class members, reviewing claim forms and determining which class members are eligible to participate in the settlement, calculating each class member's individual settlement award, cutting the settlement checks, and mailing them to class members. Ex. B (Settlement Agreement) ¶ 2.1.

CLASS ACTION SETTLEMENT PROCEDURE

Courts have established a defined procedure and specific criteria for settlement approval in class action settlements that include three distinct steps:

1. Preliminary approval of the proposed settlement after submission to the court of a written motion for preliminary approval and certification of the settlement class;
2. Dissemination of mailed and/or published notice of settlement to all affected class members; and
3. A final settlement approval hearing at which class members may be heard regarding the settlement, and at which argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. *See* Fed. R. Civ. P. 23(e); *see also* Herbert B. Newberg & Alba Conte, 4 *Newberg on Class Actions* (“*Newberg*”) §§ 11:22 *et seq.* (4th ed. 2002). This process safeguards class members’ procedural due process rights and enables the Court to fulfill its role as the guardian of class interests. With this motion, Plaintiff requests that the Court take the first step – granting preliminary approval of the Settlement Agreement, conditionally certifying the settlement class, appointing Plaintiff’s counsel as Class Counsel, and approving the Proposed Notice and Claim Form and authorizing the claims administrator to send them.

Plaintiff respectfully submits the following proposed schedule for final resolution of this matter for the Court’s consideration and approval:

1. If the Court grants preliminary approval of the settlement, within 5 days of the date of the Court’s order, Defendants will provide the claims administrator with a list, in electronic form, of the following for all class members: (1) last known address, (2) last known telephone number, (3) date on which Defendants received their application for employment, and

(4) information regarding felony criminal history, if such information exists in Defendants' records. Ex. B (Settlement Agreement) ¶ 1.5.

2. The claims administrator will mail the Settlement Notice and Claim Form to class members within 10 days after receiving the class list. *Id.* ¶ 2.5(B).

3. Class members will have 30 days after the date the Settlement Notice is mailed to opt out of or object to the settlement ("Opt-Out Period"). *Id.* ¶ 2.6(A). Class members will have 60 days to return a Claim Form after the date the Settlement Notice is mailed. *Id.* ¶ 2.7(A).

4. Plaintiff will file a Motion for Final Approval of Settlement no later than 15 calendar days before the Fairness Hearing. *Id.* ¶ 2.9.

5. After the Fairness Hearing, if the Court grants Plaintiff's Motion for Final Approval of the Settlement, the Court will issue an Order Granting Final Approval. If no party seeks a rehearing, reconsideration, or appeal of the Court's Final Order and Judgment, the effective date of the settlement will be 31 days after the Court enters its Order Granting Final Approval ("Effective Date"). *Id.* ¶ 1.11(B)(1).

6. If a party seeks rehearing, reconsideration, or appeal of the Court's Final Order and Judgment, the Effective Date of Settlement shall be the day after all avenues of rehearing, reconsideration, and appellate review have been exhausted and no further rehearing reconsideration or appellate review is permitted, and the time for seeking such review has expired. *Id.* ¶ 1.11(B)(2).

7. The claims administrator will disburse settlement awards to class members, Class Counsel's Court-approved attorneys' fees and costs, and Plaintiff's service award within 5 days of the Effective Date of the settlement. *Id.* ¶ 3.1(C).

ARGUMENT

I. Preliminary Approval of the Settlement Is Appropriate.

“Judicial review of a proposed class action settlement is a two-step process: preliminary fairness approval and a subsequent fairness hearing.” *Smith v. Profl Billing & Mgmt. Servs., Inc.*, No. 06-4453, 2007 WL 4191749, at *1 (D.N.J. Nov. 21, 2007) (citing *Jones*, 2007 WL 2085357, at *2). The first step requires that a court make a preliminary evaluation of the fairness of the settlement before notice is permitted to issue to class members. *Id.*

There is a presumption of fairness when the court determines that: “(1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) (internal citation omitted). Overall, preliminary approval is granted “unless a proposed settlement is obviously deficient.” *Jones*, 2007 WL 2085357, at *2. The proposed settlement here meets all of the requirements for preliminary approval.

A. The Parties Participated in Arm’s-Length Negotiations.

Plaintiff satisfies the first factor because the settlement was the product of arm’s-length negotiations between counsel well-versed in Title VII and class action law with the assistance of a third-party private mediator. The parties attended a day-long mediation, during which they advocated their respective views and shared detailed damages calculations. Bien Decl. ¶ 33. At the conclusion of the mediation, the parties agreed to the material terms of the settlement, which they then reduced to a detailed settlement agreement. *Id.* ¶¶ 34-35.

B. The Parties Engaged in Extensive Discovery Before Agreeing to Resolve the Case.

The parties completed enough discovery to recommend settlement. The pertinent question is “whether counsel had an adequate appreciation of the merits of the case before negotiating.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004) (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001)) (internal quotation marks and citation omitted). The discovery here meets this standard. Plaintiff obtained substantial amounts of information, including the criminal background policy, documents reflecting its application, and data regarding the number of applicants who were rejected pursuant to the policy, as well as jurisdictional discovery regarding Defendants’ contacts with Pennsylvania. Bien Decl. ¶¶ 26, 28. Plaintiff also performed detailed damages calculations based on data that Defendants provided, including the proportion of applicants likely to be hired, their potential pay, and turnover rates at USA and PAM. *Id.* ¶ 31. Defendants also deposed Plaintiff, and Plaintiff took the depositions of a Fed. R. Civ. P. 30(b)(6) witness and representatives of USA and PAM. *Id.* ¶ 26.

Based on this discovery, the parties were well-equipped to evaluate the strengths and weaknesses of their claims and defenses. *See Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 252 (E.D. Pa. 2011) (approving settlement where the parties had completed document production and answered interrogatories because, “[w]ith this information in hand, all parties were able to assess the strengths and weaknesses of their case”); *O’Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 300 (E.D. Pa. 2003) (“This factor weighs in favor of settlement because the parties were fully aware of the facts and their positions prior to beginning negotiations”); *Bonett v. Educ. Debt Servs.*, No. 01-6528, 2003 WL 21658267, at *6 (E.D. Pa. May 9, 2003) (settlement favored where “[t]he parties arrived at an arms-length settlement . . . [with] a clear view of the

strengths and weaknesses of their case”) (internal citations omitted). This factor also weighs in favor of preliminary approval.

C. Plaintiff’s Counsel Is Experienced in Complex Title VII Litigation.

Plaintiff’s attorneys are experienced employment class action litigators. Courts have routinely designated them as class counsel in employment class actions and recognized their expertise in this area. *See Duling v. Gristede's Operating Corp.*, 267 F.R.D. 86, 99 (S.D.N.Y. 2010) (designating Outten & Golden LLP as class counsel and finding them “experienced and well qualified to conduct the instant [Title VII class action] litigation”); *Westerfield v. Wash. Mut. Bank*, No. 06 Civ. 2817, 2009 WL 6490084, at *3 (E.D.N.Y. June 26, 2009) (“[Outten & Golden LLP]’s lawyers have substantial experience prosecuting and settling employment class actions”); *Maldonado v. Houstoun*, 177 F.R.D. 311, 322 (E.D. Pa. 1997) (finding that Community Legal Services has “extensive experience in complex litigation generally and in class actions in particular”). This factor weighs in favor of preliminary approval.

D. After Notice Issues, the Court Will Be in a Better Position to Weigh the Reaction of the Class.

The Court will be in a better position to weigh the reaction of the class after notice issues and class members are given an opportunity to opt out or object. *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 318 (3d Cir. 1998) (This factor “attempts to gauge whether members of the class support the settlement”). Plaintiff has demonstrated his approval of the settlement by signing the settlement agreement.

II. Conditional Certification of the Rule 23 Class Is Appropriate.

After doing a preliminary evaluation of the fairness of the settlement, the court must determine if conditional certification of the proposed class is appropriate. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 621-22 (1997). At this stage, the court need only make a preliminary

determination that the proposed class satisfies the criteria for class certification under Fed. R. Civ. P. 23(a) and (b). *In re Ins. Brokerage Antitrust Litig.*, No. 1663, 2007 WL 2589950, at *2-3 (D.N.J. Sept. 4, 2007), *aff'd*, 579 F.3d 241 (3d Cir. 2009); Manual for Complex Litigation § 21.633 (4th ed. 2004) (“The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)”).

Plaintiff respectfully requests that the Court conditionally certify the following class for purposes of effectuating the settlement:

All Latino and African American individuals who submitted applications to Defendants for a placement with one of the trucking companies for which Defendants recruit inexperienced truck drivers and whom Defendants rejected based on their criminal background between January 24, 2009 and September 30, 2010.

Under Rule 23, a class action may be maintained if all of the requirements of Rule 23(a) are met, as well as one of the requirements of Rule 23(b). Rule 23(a) requires that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b)(2) requires the Court to find that the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. Fed. R. Civ. P. 23(b)(2). Rule 23(b)(3) requires the Court to find that: (1) questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and that (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

Conditional settlement approval, class certification, and appointment of Class Counsel have practical purposes, including avoiding the costs of litigating class status while facilitating a global settlement, ensuring that all class members are notified of the terms of the proposed settlement, and setting the date and time of the final approval hearing. *See In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d at 778, 784. Defendants do not oppose conditional certification for settlement purposes. *See Newberg* § 11.27 (“When the court has not yet entered a formal order determining that the action may be maintained as a class action, the parties may stipulate that it be maintained as a class action for the purpose of settlement only.”).

A. Plaintiff Meets the Requirements of Rule 23(a).

1. Numerosity

Numerosity is satisfied when the class is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Courts in the Third Circuit typically find that “classes of close to one hundred members are sufficient.” *Jones*, 2007 WL 2085357, at *3 (citing *Eisenberg v. Gannon*, 766 F.2d 770, 785-86 (3d Cir. 1985)). Here, Plaintiff easily satisfies the numerosity requirement because there are potentially more than 5,500 class members. Bien Decl. ¶ 37.

2. Commonality

The proposed class also satisfies the commonality requirement, the purpose of which is to test “whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). To demonstrate commonality, Plaintiff must show that “the named plaintiff[] share[s] at least one question of fact or law with the grievances of the

prospective class.” *Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001) (quoting *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir.1994)) (internal quotation marks omitted). All class members need not have identical claims or claims arising from the same factual scenario. *See In re Prudential*, 148 F.3d at 310. Indeed, “factual differences among the claims of the putative class members do not defeat certification.” *Id.* (quoting *Baby Neal*, 43 F.3d at 56) (internal quotation marks omitted).

Here, class members’ claims share common facts and are premised on a common legal theory. Each class member applied for an entry-level over-the-road truck driver position and was rejected based on Defendants’ criminal background hiring policy. Whether Defendants’ policy had a disparate impact on African Americans and Latinos or was justified by business necessity are two legal questions that all class members share. *See Lanning v. Se. Pennsylvania Transp. Auth.*, 176 F.R.D. 132, 150-51 (E.D. Pa. 1997) (commonality satisfied in a disparate impact Title VII case challenging the use of a physical fitness test where “[t]he legality of SEPTA’s conduct is central to the claims of all the plaintiffs and prospective class members”); *Webb v. Westinghouse Elec. Corp.*, 78 F.R.D. 645, 652 (E.D. Pa. 1978) (commonality satisfied where all class members were allegedly denied positions based on race); *cf. Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2553 (2011) (holding that, “if the employer used a biased testing procedure to evaluate both applicants for employment and incumbent employees, a class action on behalf of every applicant or employee who might have been prejudiced by the test clearly would satisfy the commonality and typicality requirements of Rule 23(a)”) (citing *Falcon*, 457 U.S. at 159 n.15).

3. Typicality

Plaintiff satisfies the typicality requirement. Typicality is satisfied where each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability. *See Jones*, 2007 WL 2085357, at *3. The central inquiry is whether "the named plaintiff's individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that . . . of other class members" *Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3d Cir. 1985) (quoting *Weiss v. York Hosp.*, 745 F.2d 786, 809 n.36 (3d Cir. 1984), *cert. denied*, 470 U.S. 1060 (1985)) (internal quotation marks omitted). The requirement is met where "the plaintiff and each member of the represented group have an interest in prevailing on similar legal claims." *Seidman v. Am. Mobile Sys., Inc.*, 157 F.R.D. 354, 360 (E.D. Pa. 1994); *see also Cichonski v. Am. Inventors Corp.*, No. 95 Civ. 04079, 1995 WL 657107, at *3 (E.D. Pa. Nov. 3, 1995) (explaining that typicality seeks "to ascertain that the interests of the class representative are closely aligned with those of the class, so as to ensure fair representation of absentee class members").

Here, Plaintiff's and the class members' claims arise from the same course of events – they all applied for entry-level truck driver placements and were denied those placements as a result of Defendants' criminal background hiring policy. They also make the same legal arguments in support of their claims – that Defendants' criminal background policy had a disparate impact on African Americans and Latinos and was not justified by business necessity. *See Lanning*, 176 F.R.D. at 151 (typicality satisfied in a disparate impact Title VII case challenging the use of a physical fitness test because "[t]he legal claims of the named plaintiffs and those of the proposed class members are identical" and "the factual circumstances from which the claims of the named plaintiffs and proposed class members arose are strikingly

similar”); *Webb*, 78 F.R.D. at 652 (typicality satisfied where plaintiffs were all subject to the same discriminatory personnel policies).

4. Adequacy

Satisfaction of the adequacy requirement involves a two-part inquiry: the qualifications of class counsel and the interests of the named plaintiff. *See In re Prudential*, 148 F.3d at 312. Courts have consistently found Plaintiff’s counsel to be adequate as Class Counsel. *See Easterling v. Conn. Dept. of Corr.*, 265 F.R.D. 45, 51 n.2 (D. Conn. 2010) (finding Outten & Golden LLP to “be qualified, experienced, and generally able to conduct the proposed litigation” in a Title VII disparate impact class action) (internal quotation marks omitted), *modified on other grounds by* No. 08 Civ. 826, 2011 WL 5864829 (D. Conn. Nov. 22, 2011); *Duling*, 267 F.R.D. at 99 (designating Outten & Golden LLP as class counsel and finding them “experienced and well qualified to conduct the instant [Title VII class action] litigation”); *Westerfield*, 2009 WL 6490084, at *3 (“[Outten & Golden LLP]’s lawyers have substantial experience prosecuting and settling employment class actions”); *Ralston v. Zats*, No. 94 Civ. 3723, 2000 WL 1781590, at *4 (E.D. Pa. Nov. 7, 2000) (appointing Community Legal Services as class counsel and describing them as “well-respected, with experience in class action litigation”); *Maldonado*, 177 F.R.D. at 322 (appointing Community Legal Services as class counsel and observing that “[t]here is no doubt that plaintiffs’ attorneys are well-qualified to conduct the proposed [class action] litigation”).

Plaintiff is also an adequate representative of the class. He shares the class’s interest in establishing the unlawfulness of Defendants’ criminal background policy and obtaining equitable and injunctive relief. *See Amchem Prods.*, 521 U.S. at 625 (“The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to

represent.”); *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977) (“[A] class representative must be part of the class and ‘possess the same interest and suffer the same injury’ as the class members”) (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 216 (1974)).

B. Certification Is Proper Under Rule 23(b)(2) and (b)(3).

In addition to satisfying the 23(a) requirements, Plaintiff meets the requirements under 23(b)(2) and (b)(3). Plaintiff’s claim for injunctive relief may be certified under Rule 23(b)(2), which permits certification where the defendant has “acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). Plaintiff’s claim for monetary damages may be certified under Rule 23(b)(3), which provides that a class may be certified where common issues predominate over individual issues and the class mechanism is superior to individual proceedings. Fed. R. Civ. P. 23(b)(3). *See Osgood v. Harrah’s Entm’t, Inc.*, 202 F.R.D. 115, 129-30 (D.N.J. 2001) (approving a “hybrid” or “bifurcated” procedure, under which the court certifies a Rule 23(b)(2) class for that portion of the case addressing injunctive relief and a Rule 23(b)(3) class for the portion of the case addressing damages) (citing *Lemon v. Int’l Union of Operating Eng’rs, Local No. 139, AFL-CIO*, 216 F.3d 577, 581 (7th Cir. 2000)); *Newberg* § 4.14 (discussing the court’s authority in a Title VII action to certify hybrid claims under Rule 23(b)(2) and (b)(3)).

Plaintiff’s claim for injunctive relief satisfies Rule 23(b)(2) because Defendants applied the criminal background policy uniformly to all members of the class and thus the class as a whole shares the same interest in obtaining the injunctive relief provided by the settlement – prospective changes to the policy. Ex. B (Settlement Agreement) ¶ 3.6 and Ex. B (Revised

Hiring Criteria). *See Wal-Mart Stores*, 131 S. Ct. at 2557 (“The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.”) (internal quotation marks omitted).

The Rule 23(b)(3) inquiry examines “whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods.*, 521 U.S. at 623. Here, Plaintiff’s claim for monetary relief satisfies Rule 23(b)(3) because common issues predominate over individual ones and adjudication on a classwide basis is superior to individual proceedings. *See In re Prudential*, 148 F.3d at 313-14.

1. Common issues predominate

Predominance ensures that a “class is sufficiently cohesive to warrant adjudication by representation.” *In re LifeUSA Holding, Inc.*, 242 F.3d 136, 144 (3d Cir. 2001). Courts in this district have held that “[p]redominance is readily satisfied, where the core claims asserted by each Class member all arise out of the same transaction or occurrence” *Bonett v. Educ. Debt Servs., Inc.*, No. 01 Civ. 6528, 2003 WL 21658267, at *4 (E.D. Pa. May 9, 2003).

Here, the core claim is that Defendants’ criminal background policy disparately affected African Americans and Latinos and could not be justified by business necessity. Moreover, the claims of the class stem from the same transaction or occurrence – Defendants’ application of the policy to deny them employment as entry-level over-the-road truck drivers. The common issues – whether the policy caused a disparate impact, whether business necessity justified the policy, whether a less discriminatory policy existed, and the aggregate amount of damages owed to the class – predominate over any individualized questions. *See Easterling v. Conn. Dep’t of Corr.*, No. 08 Civ. 826, 2011 WL 5864829, at *8 (D. Conn. Nov. 22, 2011) (holding that individual

questions regarding class member status, qualifications, and mitigation were less substantial than the issues that were subject to generalized proof, including whether the challenged physical fitness test had a disparate impact on female applicants; whether that impact was justified by business necessity; the total amount of back pay, the rate at which those women would have been paid; the total number of priority hiring slots that should be awarded, if any; and the total amount of front pay); *United States v. City of New York*, 276 F.R.D. 22, 48-49 (E.D.N.Y. 2011) (finding that common issues, including the aggregate amount of relief available and the criteria used to establish who is eligible to receive retroactive seniority and priority hiring relief, predominated in a disparate impact case challenging a written entrance examination, despite individual questions regarding claimants' mitigation efforts). To the extent that any individualized questions exist, including mitigation, they do not predominate over the common issues. *Id.*

The fact that the settlement will eliminate the need to litigate the common questions does not render them irrelevant to the certification decision. *See In re Nassau County Strip Search Cases*, 461 F.3d 219, 228 (2d Cir. 2006); *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 299 (1st Cir. 2000). Because these questions predominate, this factor weighs in favor of class certification.

2. A class action is a superior method of adjudication

The superiority requirement asks the court “to balance, in terms of fairness and efficiency, the merits of a class action against those of ‘alternative available methods’ of adjudication.” *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 632 (3d Cir. 1996) (quoting *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 757 (3d Cir. 1974) (en banc), *cert. denied*, 419 U.S. 885 (1974)). Class actions are particularly appropriate where the potential recovery for each class member is small. *See Amchem Prods.*, 521 U.S. at 617 (“The policy at the very core of the class

action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.”) (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)) (internal quotation marks omitted).

Here, a class action is the superior method of adjudication because individual class members – applicants for entry-level truck driver positions – likely do not have the resources to litigate their claims individually, especially given the relatively small damages they could expect to recover. Bien Decl. ¶ 36. Further, there is a strong possibility that class members would never have asserted claims on their own, given that Plaintiff’s legal theory is still relatively novel, and proving it would have required statistical evidence and expert testimony. A class action, on the other hand, alleviates these problems by providing notice to potential claimants of their rights and allowing them to consolidate their resources in a single action.

III. Plaintiff’s Counsel Should Be Appointed as Class Counsel.

Outten & Golden LLP and Community Legal Services, Inc. should be appointed as Class Counsel. Rule 23(g), which governs the appointment of class counsel for a certified class, sets forth four criteria that courts must consider in evaluating the adequacy of proposed class counsel: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel’s experience in handling class actions and claims of the type asserted in the action; (3) counsel’s knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Plaintiff’s counsel meet all relevant criteria. As discussed above, they did substantial work identifying, investigating, prosecuting, and settling the claims; have substantial experience prosecuting and settling Title VII and other employment class actions; are well-versed in Title VII class action law; and are well-qualified to represent the interests of the class. Bien Decl. ¶¶

4-14; *Easterling*, 265 F.R.D. at 51 n.2; *Duling*, 267 F.R.D. at 99; *Ralston*, 2000 WL 1781590, at *4; *Maldonado*, 177 F.R.D. at 322.

IV. The Proposed Class Notice Is Appropriate.

The contents of the proposed Settlement Notice, which is attached to the Bien Decl. as Exhibit C, fully complies with due process and Federal Rule of Civil Procedure 23. Pursuant to Rule 23(c)(2)(B), the notice must provide:

the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through counsel if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

The Settlement Notice satisfies each of these requirements. It also provides information regarding the range of potential settlement awards, the allocation formula, and the allocation of attorneys' fees and costs, and notifies class members of the date, time, and place of the Fairness Hearing and how to object to or exclude oneself from the settlement. This information is adequate to put class members on notice of the proposed settlement and is well within the requirements of Rule 23(c)(2)(B). The Settlement Notice closely adheres to the model forms that the Federal Judicial Center recommends on its website. *See* <http://www.fjc.gov> (last visited January 17, 2012).

The Settlement Agreement provides that the claims administrator will mail the Settlement Notice to the last known address of each class member within approximately 15 days of the Court's preliminary approval order. Ex. B (Settlement Agreement) ¶ 2.5(B). The claims administrator will take all reasonable steps to obtain the correct addresses of any class members

for whom notices are returned as undeliverable. *Id.* Class members will have 30 days to opt out of or object to the settlement and 60 days to return their claim form. *Id.* ¶¶ 2.6-2.8. Within five days of the effective date of the settlement, the claims administrator will mail class members their payments. *Id.* ¶ 3.4(E).

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court preliminarily approve the settlement, conditionally certify the settlement class, appoint Plaintiff's counsel as Class Counsel, approve the Settlement Notice and Claim Form, and enter the Proposed Order.

Dated: January 17, 2012
New York, New York

Respectfully submitted,

OUTTEN & GOLDEN LLP

By:

/s/ Rachel Bien

Rachel Bien

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Attorneys for Plaintiff and the proposed Class

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JEFFREY MAYER, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

DRIVER SOLUTIONS, INC., DRIVER
SOLUTIONS, LLC, DRIVER HOLDINGS,
LLC, and C&S ACQUISITION, INC.,

Defendants.

CLASS ACTION

10-CV-1939 (JCJ)

DECLARATION OF SERVICE

I, Rachel Bien, attorney for Plaintiff, Jeffrey Mayer, in the above-captioned matter, hereby declare that on the date listed below, I caused a true and correct copy of Memorandum of Law in Support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement, the Declaration of Rachel Bien and its exhibits, and this Declaration to be served upon Defendants' counsel, Jacqueline K. Gallagher, Jacob M. Sitman, and Colleen M. O'Donnell of Obermayer Rebmann Maxwell & Hippel LLP, One Penn Center, 19th Floor, 1617 JFK Boulevard, Philadelphia, PA 19103, by electronically filing the original aforementioned documents with the Court using the Electronic Case Filing ("ECF") System. Those documents are available for viewing and downloading from the ECF System.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: New York, New York
January 17, 2012

/s/ Rachel Bien

Rachel Bien

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JEFFREY MAYER, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

DRIVER SOLUTIONS, INC., DRIVER
SOLUTIONS, LLC, DRIVER HOLDINGS,
LLC, and C&S ACQUISITION, INC.,

Defendants.

CLASS ACTION

10-CV-1939 (JCJ)

**DECLARATION OF RACHEL BIEN
IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT,
CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT
OF PLAINTIFF'S COUNSEL AS CLASS COUNSEL, AND APPROVAL OF THE
PROPOSED NOTICE OF SETTLEMENT AND CLASS ACTION SETTLEMENT
PROCEDURE**

I, Rachel Bien, declare as follows:

1. I am an attorney at the law firm of Outten & Golden LLP ("O&G") in New York, New York, which, together with Community Legal Services, Inc. ("CLS"), is Plaintiff's counsel herein. O&G is a 30+ attorney firm that represents plaintiffs in a wide variety of employment matters, including individual and class action litigation involving wage and hour and discrimination claims, as well as contract and severance negotiations.

2. I have been one of the lawyers primarily responsible for the prosecution of Plaintiff's claims on behalf of the proposed class in this matter.

3. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

Counsel's Background and Experience

4. I received a Juris Doctor degree *cum laude* from Brooklyn Law School in 2005. I was admitted to the bar of the State of New York in 2006 and am also admitted to the bars of the Second Circuit Court of Appeals and the United States District Courts for the Eastern and Southern Districts of New York. I am a member in good standing of each of these bars.

5. On May 17, 2010, I was admitted *pro hac vice* to serve as counsel in this case.

6. After serving as a judicial clerk for the Honorable Thomas G. Nelson on the Ninth Circuit Court of Appeals, I joined O&G in 2006, where I have exclusively represented plaintiffs in employment litigation and other employee rights matters.

7. I have prosecuted several employment cases that district courts have certified as class actions, including *Willix v. HealthFirst, Inc.*, No. 07 Civ. 1143, 2011 WL 754862 (E.D.N.Y. Feb. 18, 2011); *Campos v. Goode*, 10 Civ. 0224, 2010 WL 5508100 (S.D.N.Y. Nov. 29, 2010); *deMunecas v. Bold Food LLC*, No. 09 Civ. 00440, 2010 WL 3322580 (S.D.N.Y. Aug. 23, 2010); *Clark v. Ecolab Inc.*, Nos. 07 Civ. 8623, 04 Civ. 4488, 06 Civ. 5672, 2010 WL 1948198 (S.D.N.Y. May 11, 2010); *McMahon v. Olivier Cheng Catering and Events, LLC*, No. 08 Civ. 8713, 2010 WL 2399328 (S.D.N.Y. Mar. 3, 2010); *Khait v. Whirlpool Corp.*, No. 06 Civ. 6381, 2010 WL 2025106 (E.D.N.Y. Jan. 20, 2010); *O'Dell v. AMF Bowling Ctrs., Inc.*, No. 09 Civ. 759, 2009 WL 6583142 (S.D.N.Y. Sept. 18, 2009); and *Reyes v. Buddha-Bar NYC*, No. 08 Civ. 02494, 2009 WL 5841177 (S.D.N.Y. May 28, 2009).

8. I am a member of the American Bar Association's Labor and Employment Law Section and the Equal Employment Opportunity Committee. I am also a member of the National Employment Lawyers Association ("NELA") and NELA's New York Chapter. I speak frequently on employment law issues, including class action practice.

9. I worked closely with CLS attorneys Janet Ginzberg and Brendan Lynch throughout the litigation and resolution of this case.

10. Janet Ginzberg received a Juris Doctor degree from Brooklyn Law School in 1993. She is a member in good standing of the Pennsylvania, New York, and New Jersey bars, and the U.S. District Court for the Eastern District of Pennsylvania. Prior to becoming a Senior Staff Attorney at CLS, Ms. Ginzberg was an attorney at the law firm of Connolly Epstein Chicco Foxman Oxholm & Ewing, practicing in the areas of employment law, commercial litigation, personal injury and intellectual property. From 1995 until 1997, she was an Assistant City Solicitor in the Civil Rights Unit of the Law Department of the City of Philadelphia. She served as a law clerk to the Honorable James T. Giles from 1993 to 1995.

11. Ms. Ginzberg has prosecuted employment law cases that district courts have certified as class actions, including *Henderson v. Hireright Solutions*, No. 11 Civ. 00558 (E.D. Va. Dec. 22, 2011), and *Smith v. Hireright Solutions*, No. 11 Civ. 00505 (E.D. Va. Dec. 22, 2011).

12. Brendan Lynch received a Juris Doctor degree from Harvard Law School in 1998. He is a member in good standing of the U.S. District Court for the Eastern District of Pennsylvania. In 2000, Mr. Lynch served as a law clerk for the Honorable Petrese Tucker. From 1998 to 2000, he worked as a Staff Attorney at CLS and returned there in 2001 after his clerkship ended.

13. Mr. Lynch prosecuted *Georigi v. Recon Automotive Remanufacturers*, No. 07 Civ. 5509, 2009 WL 1312607 (E.D. Pa. May 7, 2009), which was certified as a class action.

14. Courts have repeatedly appointed O&G and CLS as class counsel in employment class actions, including Title VII cases. *See Easterling v. Connecticut, Dept. of Corr.*, 265

F.R.D. 45, 51 n.2 (D. Conn. 2010) (finding Outten & Golden LLP to “be qualified, experienced, and generally able to conduct the proposed litigation” in a Title VII disparate impact class action), *modified sub nom. Easterling v. Connecticut Dept. of Corr.*, No. 3:08 Civ. 826, 2011 WL 5864829 (D. Conn. Nov. 22, 2011); *Duling v. Gristede's Operating Corp.*, 267 F.R.D. 86, 99 (S.D.N.Y. 2010) (appointing Outten & Golden LLP as class counsel and finding them “experienced and well qualified to conduct the instant [Title VII class action] litigation”); *Westerfield v. Washington Mut. Bank*, No. 06 Civ. 2817, 2009 WL 6490084, at *3 (E.D.N.Y. June 26, 2009) (“[Outten & Golden LLP]’s lawyers have substantial experience prosecuting and settling employment class actions”); *Ralston v. Zats*, No. 94-3723, 2000 WL 1781590, at *4 (E.D. Pa. Nov. 7, 2000) (appointing Community Legal Services as class counsel and describing them as “well-respected, with experience in class action litigation”); *Maldonado v. Houstoun*, 177 F.R.D. 311, 322 (E.D. Pa. 1997) (appointing Community Legal Services as class counsel and observing that “[t]here is no doubt that plaintiffs’ attorneys are well-qualified to conduct the proposed [class action] litigation”), *aff’d*, 157 F.3d 179 (3d Cir. 1998).

Litigation

15. Plaintiff Jeffrey Mayer (“Plaintiff”) filed a Class Action Complaint on April 30, 2010, asserting a disparate impact claim under Title VII of the Civil Rights Act of 1964 (“Title VII”) on behalf of a class of African American and Latino job applicants.

16. Defendants’ criminal background hiring policy barred all applicants with felonies within the last ten years, as well as all felonies related to violence or drugs, no matter the time since the conviction.

17. On July 12, 2010, Defendants moved to dismiss the Complaint on the grounds that the court lacked personal jurisdiction over them, that venue was improper, and that they

could not be held liable, as an employment agency, under Title VII.

18. Plaintiff filed a First Amended Class Action Complaint on July 23, 2010, which incorporated additional jurisdictional facts. A true and correct copy of the First Amended Complaint is attached hereto as **Exhibit A**.

19. On July 20, 2010, the Court “so ordered” the parties’ stipulation providing for a period of jurisdictional discovery and extending the time for Plaintiff to oppose the motion to dismiss. ECF No. 16.

20. Before Plaintiff filed his opposition, the parties sought a stay of litigation in order to engage in settlement discussions.

21. The Court granted a sixty-day stay on August 13, 2010, followed by two additional stays through January 21, 2011.

22. Unfortunately, the parties were unable to reach agreement, and returned to litigation at the end of January 2011.

23. On February 16, 2011, Plaintiff filed a motion seeking to join USA Truck, Inc. (“USA”) and P.A.M. Transportation Services, Inc. (“PAM”) as additional Defendants.

24. Defendants opposed the motion and re-filed their motion to dismiss the First Amended Class Action Complaint.

25. On March 9, 2011, Plaintiff requested that the Court grant him a period of discovery in order to respond to Defendants’ motion to dismiss and support his motion for joinder. The Court granted Plaintiff’s request on April 1, 2011.

26. Plaintiff propounded interrogatories, document requests, and requests for admissions on Defendants regarding their contacts with Pennsylvania and deposed a Fed. R. Civ. P. 30(b)(6) witness. Plaintiff subpoenaed witnesses from USA and PAM to appear for

depositions and to produce documents regarding their knowledge of Plaintiff's EEOC charge. Defendants propounded document requests on Plaintiff and deposed him.

Informal Discovery

27. The parties engaged in substantial formal and informal discovery before agreeing to resolve this case.

28. During their settlement negotiations, in response to Plaintiff's requests, Defendants produced documents related to the claims, including the criminal background hiring policy, data on the numbers of rejected applicants with criminal histories and the nature of their crimes, and correspondence with USA and PAM, related to the development and application of the criminal background policy.

29. Defendants also provided information to Plaintiff regarding the role of USA and PAM in devising the criminal background policy and informed them that, after the lawsuit was filed, USA and PAM took over the role of applying the policy to applicants.

Mediation and Settlement

30. On July 8, 2011, the Court granted the parties' request for a further stay of litigation so that they could revive settlement negotiations in advance of private mediation.

31. Prior to the mediation, at Plaintiff's request, Defendants produced information that would allow Plaintiff to generate an estimate of damages, including updated data on the number of rejected applicants with criminal backgrounds, data on the numbers of applicants who graduate from truck driver training, and expected compensation and turnover rates at USA and PAM.

32. Plaintiff hired a labor economist, Dr. Marc Bendick, Jr., Ph.D., to assist him to generate a damages model, which he shared with Defendants in advance of the parties'

mediation.

33. On October 4, 2011, the parties participated in a 12-hour mediation with an experienced employment law mediator, Alfred G. Feliu, Esq., during which they advocated their respective views and shared detailed damages calculations.

34. The parties reached agreement on the material terms of a settlement, including the monetary amount, at the conclusion of the mediation.

35. The parties then negotiated a formal settlement agreement incorporating all terms. A fully executed copy of the settlement agreement is attached hereto as **Exhibit B**.

36. In Plaintiff's counsel's estimation, the settlement represents a significant percentage of the recovery that Plaintiff would have achieved had he prevailed and survived an appeal and a substantial portion of what Defendants would be able to pay if faced with a judgment.

37. Defendants have represented that approximately 5,516 applicants were rejected based on the criminal background policy during the class period.

38. A proposed Court-Authorized Notice is attached hereto as **Exhibit C**.

39. A proposed Claim Form is attached hereto as **Exhibit D**.

Role of the Named Plaintiff

40. The named Plaintiff, Jeffrey Mayer, performed significant services to the class.

41. These services included, but were not limited to, informing counsel of the facts initially and as the case progressed, submitting to a deposition, producing documents in response to document requests, attending a full-day mediation session, participating in litigation strategy, and reviewing and commenting on the terms of the settlement.

Claims Administration

42. Plaintiff has retained Kurtzman Carson Consultants LLC, an experienced class action claims administrator to administer the settlement.

I declare under penalty of perjury, under 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 17th day of January, 2012
New York, New York

/s/ Rachel Bien

Rachel Bien

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Attorneys for Plaintiff and the Proposed Class

Exhibit A

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JEFFREY MAYER, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

DRIVER SOLUTIONS, INC., DRIVER
SOLUTIONS, LLC, DRIVER HOLDINGS,
LLC, and C&S ACQUISITION, INC.,

Defendants.

**FIRST AMENDED CLASS
ACTION COMPLAINT**

1004 1939

Plaintiff, Jeffrey Mayer, individually and as a class representative on behalf of all others similarly situated, by his attorneys Outten & Golden LLP and Community Legal Services, Inc., makes the following allegations against Defendants Driver Solutions, Inc., Driver Solutions, LLC, Driver Holdings, LLC, and C&S Acquisitions, Inc. ("Driver Solutions," "Defendants," or "the Company"):

STATEMENT OF THE CASE

1. Driver Solutions specializes in training new truck drivers and placing them with well-known trucking companies. The Company refuses to procure placements for applicants with a felony conviction, no matter how old the conviction, its relation to the job, or the fitness or

ability of the applicant for the job. Because this practice perpetuates gross racial and ethnic disparities in the criminal justice system, it is unlawful under Title VII of the Civil Rights Act of 1964.

PARTIES

Jeffery Mayer

2. Plaintiff Jeffrey Mayer is an African American man who was born in Philadelphia and lived there for three-quarters of his 48 years. He now resides in a suburb of the city in Dresher, Pennsylvania.

3. For most of his adult life, from approximately 1989 through 2006, Mr. Mayer has supported himself, his wife, and his five daughters by working as a bus driver.

4. In approximately May 2009, Mr. Mayer applied to Driver Solutions for a placement at one of the trucking companies for which it procures drivers. Mr. Mayer already had a Class B Commercial Drivers License (“CDL”) and hoped to obtain a Class A CDL by going through Driver Solutions’ training and placement program.

5. Driver Solutions refused to procure a placement for Mr. Mayer with any trucking company because of a prior felony conviction, which Mr. Mayer disclosed to Driver Solutions during a telephone interview.

6. In his current job, Mr. Mayer coordinates a team of employees who are responsible for ensuring that his employer’s fleet of vehicles is maintained in good repair.

Driver Solutions

7. Upon information and belief, Driver Solutions, Inc., Driver Solutions, LLC, Driver Holdings, LLC, and C&S Acquisitions, Inc. are a single integrated enterprise within the meaning of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”).

8. Upon information and belief, Defendants share a common management, have

common ownership, including many of the same principals and officers, and operate from the same two locations.

9. Driver Solutions, Inc. is engaged in business affecting commerce, employs more than 15 employees, and is an employment agency under Title VII.

10. Driver Solutions, Inc. uses a discriminatory background screening practice and applied it to Plaintiff and to all applicants of its services.

11. Driver Solutions, LLC is engaged in business affecting commerce, employs more than 15 employees, and is an employment agency under Title VII.

12. Driver Solutions, LLC uses a discriminatory background screening practice and applied it to Plaintiff and to all applicants of its services.

13. Driver Holdings, LLC is engaged in business affecting commerce, employs more than 15 employees, and is an employment agency under Title VII.

14. Driver Holdings, LLC uses a discriminatory background screening practice and applied it to Plaintiff and to all applicants of its services.

15. C&S Acquisitions, Inc. is engaged in business affecting commerce, employs more than 15 employees, and is an employment agency under Title VII.

16. C&S Acquisitions, Inc. uses a discriminatory background screening practice and applied it to Plaintiff and to all applicants of its services.

JURISDICTION AND VENUE

17. This Court has jurisdiction under 28 U.S.C. § 1331 as this claim arose under the Constitution, laws, or treaties of the United States and under § 717 of Title VII, 42 U.S.C. § 2000e-5(f).

18. At all relevant times, Defendants were subject to personal jurisdiction in Pennsylvania.

19. Defendants purposefully reach out to residents of Pennsylvania through advertisements on their website that directly target Pennsylvanians. A true and correct copy of one such webpage contained on Defendants' website is attached as Exhibit A.

20. Such advertisements state, *inter alia*, "The Driver Solutions Network . . . has numerous trucking job opportunities throughout the state of Pennsylvania," and "With cities like Pittsburgh, Philadelphia, Scranton and York, Pennsylvania offers a good deal of trucking job options."

21. Defendants' website also states: "We Work With Some Of The Best Names In The Trucking Industry. That's the biggest benefit of beginning a trucking career through Driver Solutions. We already have partnerships with the trucking companies new drivers want to work for. Each of these companies is well-known, well-respected and counts on us to find new, quality drivers for them. In turn, they agree to sponsor the training of new drivers like you and pay the full tuition costs up front."

22. Two of the companies having partnerships with Defendants are PAM Transport and USA Truck. PAM Transport and USA Truck both operate trucking routes in and through Pennsylvania. Upon information and belief, USA Truck has a terminal in Bethel, Pennsylvania.

23. Pennsylvania is among the states included in Defendants' "hiring area," described on their website.

24. Individuals wishing to apply for Defendants' recruitment services submit their applications to Defendants by submitting an online form through Defendants' website.

25. The application form requests applicants' address and telephone number.

26. Upon information and belief, Defendants have received applications from Pennsylvania residents submitted electronically through their website, including Plaintiff's application.

27. Upon information and belief, Defendants have entered into contracts with residents of Pennsylvania. On their website, in response to the question, "If you are considering truck driver training programs at Driver Solutions, you may be wondering if you will have to sign a contract." Defendants state, "The answer is Yes."

28. Defendants' website is highly interactive. For instance, it solicits viewers to submit comments to blogs written by Company employees and officers.

29. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5(f)(3) because Plaintiff would have been employed in this district but for Defendant's discriminatory procurement practice.

30. As described below, Defendants' website contains information that promises that applicants will be placed in a trucking position near to where they live.

PROCEDURAL AND ADMINISTRATIVE REQUIREMENTS

31. Plaintiff has satisfied the procedural and administrative requirements for proceeding under Title VII. On July 23, 2009, Plaintiff filed a timely written Charge of Discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC"). On January 29, 2010, the EEOC issued a right to sue letter to Plaintiff, which was received on February 1, 2010. Plaintiff has commenced this action within 90 days of his receipt of the notice of right to sue.

BACKGROUND

32. Arrest, conviction, and incarceration rates of African Americans and Latinos far exceed those of whites nationwide. According to the U.S. Department of Justice, almost 17% of adult black males and almost 8% of Latino males have been incarcerated. By contrast, only 2.6% of white males have been incarcerated. While African Americans make up approximately 13% of the population, they account for approximately 28% of arrests and 38% of felony

convictions in state courts around the country. Similarly, Latinos are arrested and incarcerated at rates significantly higher than their proportion of the population.

33. As a result of these statistical disparities, restrictions on hiring or placing individuals with criminal records have a disproportionately severe effect on African Americans and Latinos. In other words, policies such as Driver Solutions' effectively import the discrimination present in the criminal justice system into the employment sector. This discriminatory denial of employment affects not only the individuals who are rejected, but also their families and entire communities.

34. For decades, federal courts and the EEOC have recognized that overly broad restrictions on hiring individuals with criminal records are discriminatory and illegal under Title VII of the Civil Rights Act. That law requires that where significant racial disparity exists, the use of criminal history can be considered only where the employer can prove that the particular crime at issue is related to the particular job in question, and that denial of the position is necessary for the employer to conduct its business.

35. In *El v. SEPTA*, 479 F.3d 232 (3d Cir. 2007), the Third Circuit Court of Appeals cast serious doubt over whether blanket policies, like that of Driver Solutions, that deny employment on the basis of criminal history regardless of the type of crime, its remoteness in time, or its relation to the job in question are justifiable under Title VII.

36. The EEOC has similarly rejected blanket policies in favor of policies that take into account the nature and gravity of the offense, the time that has passed since the offense, and the nature of the job in question. Even where an individual's criminal history is job-related, denial of employment can be justified only where there is no less discriminatory alternative that would meet the employer's legitimate interests. Likewise, the Uniform Guidelines on the Use of Employee Selection Procedures mandate that any selection procedure having an adverse racial

impact on hiring or employment will be deemed discriminatory unless it has been validated as job-related and consistent with business necessity.

37. In this case, Driver Solutions, “the most comprehensive source for entry level truck driving jobs” within the Midwest, Southeast and East Coast, has a blanket practice of refusing to procure trucking jobs for applicants with any felony conviction. Such an outright ban disqualifies job applicants, like Plaintiff, whose criminal history has no bearing on their fitness or ability to perform the job.

38. In addition to being unlawful, such practices are bad public policy. The ability to find employment is an essential aspect of an ex-offender’s re-entry into society. Recidivism declines when ex-offenders have viable employment prospects and other stabilizing resources in their communities. Driver Solutions’ practice of discriminating against individuals’ with criminal records frustrates such public policy objectives. The trucking industry is also losing good workers like Mr. Mayer for no good reason.

PLAINTIFF’S FACTUAL ALLEGATIONS

39. In May 2009, Mr. Mayer filled out an application form on Driver Solutions’ website be placed with one of the trucking companies for which Driver Solutions procures applicants.

40. According to Driver Solutions’ website, its “hiring area” includes a “large portion” of the Midwest, Southeast, and East coast regions of the United States.

41. At all times relevant, Plaintiff resided in Driver Solutions’ hiring area.

42. Upon information and belief, Driver Solutions places applicants in trucking positions near to where the applicants live.

43. On Defendants’ website, Defendants state in response to the question, “Do I have to live within the Driver Solutions recruiting or hiring area?”:

Yes. Because the Driver Solutions program is a company sponsored CDL training program, you must be eligible to work for the trucking company that sponsors your truck driver training. In order for the company to hire you, you must first have an established residence within their specific hiring area.

44. Defendants' website also states, "Through our Driver Solutions company paid CDL training program, we can help put you into a pre-arranged truck driving job opportunity in Pennsylvania. Complete our online trucking application today to get your truck driver training started."

45. In addition, Defendants' website states, "Trucking Companies have specific geographical hiring areas or may offer regional or dedicated routes. Driver Solutions will take into account where you live."

46. The website also tells applicants that Driver Solutions will "match you with a Driver Solutions Network training school in your area and make all the necessary arrangements."

47. It was Mr. Mayer's belief that he was applying for a trucking job located in or around his home in eastern Pennsylvania.

48. Mr. Mayer had over 18 years of experience as a bus operator when he applied for the placement.

49. Soon after completing the application on Driver Solutions' website, Mr. Mayer received a telephone call from David Locke, a Driver Agent, at Driver Solutions. The purpose of the call was to interview Mr. Mayer for a placement.

50. During the interview, Mr. Mayer told Mr. Locke that he had a prior felony conviction and asked him whether that would have any impact on his placement.

51. Mr. Mayer had seen a statement on Driver Solutions' website that it does not place applicants with criminal histories.

52. Mr. Locke told Mr. Mayer that, due to his conviction, he did not fit the hiring

criteria of the trucking companies for which Driver Solutions recruits.

53. Mr. Locke further told Mr. Mayer that as a result of the felony conviction, Driver Solutions would not procure or attempt to procure employment for Mr. Mayer with any of the trucking companies for which it recruits.

54. In fact, Driver Solutions tells prospective applicants on the Frequently Asked Questions section of its website that it “cannot accept applicants with a felony conviction (or deferred/adjudicated) into the [Commercial Drivers License] training program.”

55. Driver Solutions states in the same section of its website that individuals with felony convictions can obtain Commercial Drivers Licenses (“CDLs”).

56. Mr. Mayer’s felony conviction was in 1986. In 1984, when Mr. Mayer was 21-years-old, he was arrested in connection with a robbery of a grocery store. Mr. Mayer contested the charges, claiming that he was mistaken for another man who looked like him, but was convicted and served a total of approximately five years in prison.

57. In the more than 20 years since his release in 1989, Mr. Mayer married, cared for his five daughters, and has consistently been employed. He has never been arrested or convicted of another crime.

58. The prior conviction had no bearing on Mr. Mayer’s ability or fitness to perform the duties of a truck driver, as his many years as a bus driver and his desistence of arrest for 20 years demonstrate.

59. In fact, the U.S. Department of Transportation, which regulates CDLs, permits individuals with felonies to obtain such licenses unless the individual is unauthorized to drive because of a felony involving a motor vehicle.

60. The HAZMAT Endorsement Threat Assessment Program (49 U.S.C. § 5103(a)(1)), which governs the eligibility requirements for transporters of hazardous materials,

also recognizes that criminal records restrictions on employment may not and should not be applied in an overbroad manner. The Program disqualifies only the most serious felonies, such as murder, espionage, acts of terrorism and crimes related to explosive devices. Individuals can petition for a waiver of the disqualification for almost all crimes. All other offenses are prohibitive of a HAZMAT clearance only if they occurred within the seven years before the application for the HAZMAT permit. (49 C.F.R. § 1572).

CLASS ACTION ALLEGATIONS

59. Plaintiff brings his class allegations under Fed. R. Civ. P. 23(a), and (b)(2) on behalf of a class defined as follows: All Latino and African American persons for whom Defendant(s) have failed or refused to procure employment or refer for employment, or who have been deterred from gaining referral for or procurement of employment, based on their criminal background between September 26, 2008 and the date of judgment in this action (the “Class”).

60. Plaintiff is a member of the Class.

61. Upon information and belief, the members of the Class are so numerous that joinder of all of them is impracticable. Driver Solutions bills itself as “the most comprehensive source for entry level truck driving jobs” within the Midwest, Southeast and East Coast. Upon information and belief, hundreds of applicants apply to Driver Solutions for placements each week. Plaintiffs do not know the precise number of Class Members – this information is in Defendant’s possession.

62. There are questions of law and fact common to the Class and these questions predominate over any questions affecting only individual members. Common questions include, among others: (1) whether Driver Solutions’ stated policy on its website that it does not seek placements for applicants with criminal records deters individuals with criminal records from applying to Driver Solutions; (2) whether it is Driver Solutions’ policy or practice to reject

applicants based on their criminal records; (3) what screening parameters Driver Solutions uses to reject applicants based on their criminal records; (4) whether Driver Solutions' policy or practice to reject applicants based on their criminal records has a disparate impact on Latino and African American applicants; (5) whether Driver Solutions' policy or practice to reject applicants based on their criminal records is job-related and consistent with business necessity; and (6) what equitable and injunctive relief for the Class is warranted.

63. Plaintiff's claims are typical of the claims of the Class: (1) Plaintiff applied for a placement with a trucking company for which Defendant procures employees; (2) Plaintiff was subjected to substantially the same screening device as other Class members; (3) Defendant refused to procure employment for Plaintiff when it learned of his criminal history; and (4) Plaintiff has the same discrimination claim as other Class members based on disparate impact. All of these claims are substantially shared by each and every class member.

64. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has no conflict with any class member. Plaintiff is committed to the goal of having Driver Solutions revise its placement policy and practice to eliminate its discriminatory impact on African American and Latino applicants.

65. Plaintiff has retained counsel competent and experienced in complex employment discrimination class actions.

66. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Driver Solutions has acted and/or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiff and the Classes as a whole. The Class members are entitled to injunctive relief to end Driver Solutions' common, uniform, unfair, and discriminatory policies and/or practices.

CLAIM FOR RELIEF

Disparate Impact Title VII of the Civil Rights Act of 1964, 42 U.S.C §§ 2000(e) *et seq.* (Brought on Behalf of Plaintiff and the Class)

67. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

68. Plaintiff brings this claim on his own behalf and on behalf of the Class.

69. Defendant's overbroad policy and practice of denying employment opportunities based on applicants' criminal histories harmed Plaintiff and the Class and constitutes unlawful race and/or national origin discrimination in violation of 42 U.S.C. §§ 2000 *et seq.*

70. Defendant's overbroad policy and practice of denying employment opportunities based on applicants' criminal histories has a disparate impact on Latinos and African Americans, and is neither job-related nor consistent with business necessity. Even if Defendant's policy and practice could be justified by business necessity, less discriminatory alternatives exist that would equally serve any alleged necessity.

71. Plaintiff and the Class have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiff and the Class he seeks to represent are now suffering, and will continue to suffer, irreparable injury from Defendant's discriminatory acts and omissions.

72. Defendant's conduct has caused, and continues to cause, Plaintiff and the members of the Title VII substantial losses in earnings and other employment benefits.

PRAYER FOR RELIEF

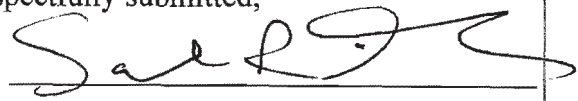
WHEREFORE, Plaintiff and the Class pray for relief as follows:

1. Certification of the case as a class action on behalf of the proposed Class;
2. Designation of Representative Plaintiff Jeffrey Mayer as representative on behalf of the Class;
3. Designation of Representative Plaintiff's counsel of record as Class counsel;
4. A declaratory judgment that the practices complained of herein are unlawful and violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*;
5. A preliminary and permanent injunction against Defendant and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, customs and usages set forth herein;
6. An order that Defendant institute and carry out policies, practices, and programs that provide equal employment opportunities for all applicants regardless of criminal history status, unless such status can be justified as job-related and consistent with business necessity, where no less discriminatory alternative exists, and that Defendant eradicate the effects of its past and present unlawful employment practices;
7. An order instating Plaintiff and the Title VII Class members in Driver Solutions' training and placement program, or in lieu of instatement, an order for back and front pay (including interest) and benefits;
8. Costs incurred herein, including reasonable attorneys' fees to the extent allowable by law, including but not limited to 42 U.S.C. §§ 2000e-5(k);
9. Pre-judgment and post-judgment interest, as provided by law; and

10. Such other and further legal and equitable relief as this Court deems necessary,
just, and proper.

Dated: July 22, 2010
New York, New York

Respectfully submitted,

By: 

COMMUNITY LEGAL SERVICES, INC.

Janet Ginzberg (Bar # 72152)
Brendan Lynch (Bar # 82675)
1424 Chestnut Street
Philadelphia, PA 19102
Telephone: 215-981-3700

OUTTEN & GOLDEN LLP

Adam T. Klein*
Justin M. Swartz*
Samuel R. Miller*
Rachel Bien*
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: 212-245-1000
* *Admitted pro hac vice*

Attorneys for Plaintiff and the Putative Class

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Job Title/Description	Company	Location
Truck Driver - CDL Training & Truck Driver Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	PAM Transport	Allentown, PA
Truck Driver - CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	PAM Transport	Harrisburg, PA
Truck Driver - Company Paid CDL Training Provided Experience: Entry Level Pay: \$35K - \$40K View Job Description	PAM Transport	York, PA
Truck Driver - CDL Truck Driver Training Provided Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Pittsburgh, PA
Truck Driver - CDL Truck Driver Training Provided Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Philadelphia, PA
Truck Driver - Truck Driver Training Provided Experience: Entry Level Pay: \$35K - \$70K View Job Description	USA Truck	Scranton, PA
Truck Driver - Truck Driver Training Provided Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Alltoona, PA
Truck Driver - Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Williamsport, PA
Truck Driver - Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Bethlehem, PA

Exhibit
A

Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	York, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Chambersburg, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Erie, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Harrisburg, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Johnstown, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Lancaster, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	McKeesport, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Meadville, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	New Castle, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Reading, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	State College, PA
Truck Driver – Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Uniontown, PA
Truck Driver – Company Paid CDL Training & Entry Level Job	USA Truck	Washington, PA

Experience: Entry Level Pay: \$35K - \$40K View Job Description		
Truck Driver - Company Paid Truck Driving School Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Allentown, PA
Truck Driver - Company Paid CDL Training & Entry Level Job Experience: Entry Level Pay: \$35K - \$40K View Job Description	USA Truck	Wilkes Barre, PA
Truck Driver - Company-paid CDL Training Experience: Entry Level Pay: \$35K - \$40K View Job Description	PAM Transport	Philadelphia, PA

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COMMUNITY LEGAL SERVICES, INC.

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New York, New York 10016
Telephone: 212-245-1000
* *Admitted pro hac vice*

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JEFFREY MAYER, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

DRIVER SOLUTIONS, INC., DRIVER
SOLUTIONS, LLC, DRIVER HOLDINGS,
LLC, and C&S ACQUISITION, INC.,

Defendants.

CERTIFICATE OF SERVICE

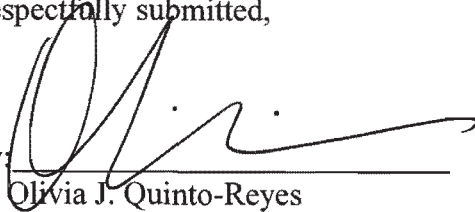
I, Olivia J. Quinto-Reyes, under penalties of perjury, certify the following as true and correct: I am not a party to this action; I am over 18 years of age; and I am a resident of the City and State of New York, New York.

I hereby certify that on July 23, 2010, I served a true and correct copy of the foregoing Plaintiff's Amended Complaint, herewith by causing same to be served by process server to the following attorneys of record for Driver Solutions, Inc., Driver Solutions, LLC, Driver Holdings, LLC, and C&S Acquisition, Inc., defendant in this action, whose last known address is:

JACQUELINE K. GALLAGHER
JACOB M. SITMAN
Obermayer Rebmann Maxwell & Hippel LLP
1617 J.F.K. Blvd
One Penn Ctr. 19th Fl
Philadelphia, Pa 19103-1895

Dated: New York, New York
July 23, 2010

Respectfully submitted,

By: 

Olivia J. Quinto-Reyes
Paralegal

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JEFFREY MAYER, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

DRIVER SOLUTIONS, INC., DRIVER
SOLUTIONS, LLC, DRIVER HOLDINGS, LLC,
and C&S ACQUISITION, INC.,

Defendants.

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE**

This Joint Stipulation of Settlement and Release (the “Agreement”) is entered into by and between Plaintiff, Jeffrey Mayer, and Defendants (as hereinafter defined) (collectively, “the Parties”).

RECITALS

WHEREAS, Plaintiff filed a Class Action Complaint on April 30, 2010 and a First Amended Class Action Complaint on July 23, 2010 (the “Complaint”);

WHEREAS, the Complaint asserted a disparate impact claim of alleged discrimination against Latino and African American individuals under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000 et seq., and sought recovery of, among other things, backpay and other equitable and/or injunctive relief, attorneys’ fees, and costs;

WHEREAS, Defendants deny the allegations made by Plaintiff in the Litigation (as hereinafter defined). Nonetheless, without admitting any liability or damages, Defendants have agreed to settle the Litigation on the terms and conditions set forth in this Agreement;

WHEREAS, Class Counsel (as hereinafter defined) has conducted extensive investigation including, but not limited to, reviewing documents produced by Defendants and the two trucking companies with which they contract, P.A.M. Transportation Services, Inc. and USA Truck, Inc., and deposing Defendants’ and other witnesses;

WHEREAS, the Parties participated in an all-day mediation session of this matter on October 4, 2011, which was conducted by Alfred G. Feliu, Esq. of Vandenberg & Feliu, LLP;

WHEREAS, Class Counsel has analyzed and evaluated the merits of the claim, and the impact of this Agreement on Plaintiff and the proposed Class (as hereinafter defined); and

WHEREAS, based upon their analysis and their evaluation of multiple factors, including recognition of the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might result in a recovery that is less favorable to the Class, and that would not occur for several years, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the proposed Class.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Litigation on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth herein shall have the meanings ascribed to them below.

- 1.1** Agreement. "Agreement" shall mean this Joint Stipulation of Settlement and Release agreement.
- 1.2** Claims Administrator. "Claims Administrator" shall mean the entity selected by Plaintiff to provide notice to the Class and administer payment of the settlement to Class Members.
- 1.3** Class; Class Members. The "Class" shall mean: all Latino and African American individuals who submitted applications between January 24, 2009 and September 30, 2010 to Defendants for a placement with one of the trucking companies for which Defendants recruit inexperienced truck drivers and whom were rejected based on their criminal background. A member of the Class is a "Class Member."
- 1.4** Class Counsel. "Class Counsel" shall mean Outten & Golden LLP and Community Legal Services, Inc.
- 1.5** Class List. The "Class List" is defined as the list, in electronic form, of Class Members. The Class List shall also include, for each such individual, his or her: (1) last known address; (2) last known telephone number; (3) date on which the individual's application was received; and (4) information regarding felony criminal history, if such information exists in Defendants' records.
- 1.6** Claim Form. "Claim Form" shall mean the form that the Claims Administrator shall mail to the individuals on the Class List. A copy of the proposed Claim Form is attached hereto as Exhibit A. A Class Member who returns a Claim Form is a "Claimant." A Claimant whose Claim Form is approved by the Claims Administrator according to the

process set forth below is an “Approved Claimant.”

- 1.7** Court. “Court” shall mean the United States District Court for the Eastern District of Pennsylvania, the Honorable J. Curtis Joyner presiding.
- 1.8** Covered Period. “Covered Period” shall mean the period from January 24, 2009 through September 30, 2010.
- 1.9** Defendants. “Defendants” shall mean Driver Solutions, Inc., Driver Solutions, LLC, Driver Holdings, LLC, and C&S Acquisitions, Inc.
- 1.10** Defendants’ Counsel. “Defendants’ Counsel” shall mean Obermayer Rebmann Maxwell & Hoppel, LLP. For purposes of providing any notices required under this Agreement, Defendants’ Counsel shall refer to Jacqueline K. Gallagher, Esquire, Obermayer Rebmann Maxwell & Hoppel, LLP, One Penn Center, 19th floor, Philadelphia, PA 19103.
- 1.11** Effective; Effective Date. “Effective” shall mean the occurrence of all of the following, and “Effective Date” shall be the date that all of the following have occurred:
- (A) the Court has entered Judgment and ruled on the motions for Plaintiff’s service payment pursuant to Section 3.3 and for attorneys’ fees and reasonable costs pursuant to Section 3.2; and
 - (B) the Judgment and the rulings on such motions have become Final. “Final” means the later of:
 - (1) 31 days after the Court enters Judgment if no reconsideration or rehearing is sought;
 - (2) If rehearing or reconsideration is sought, after any and all avenues of rehearing or reconsideration have been exhausted and no further rehearing or reconsideration is permitted, and the time for seeking such review has expired, and the Judgment and rulings on service awards and attorneys’ fees and reasonable costs have not been modified, amended or reversed in any way.
- 1.12** Fairness Hearing. “Fairness Hearing” shall mean the hearing on the Motion for Judgment and Final Approval.
- 1.13** Litigation. “Litigation” shall mean *Mayer v. Driver Solutions, Inc., et al.*, Case No. 10 Civ. 1939 (JCJ), pending in the United States District Court for the Eastern District of Pennsylvania.

- 1.14** Mediator's Fees. "Mediator's Fees" shall mean the fees charged by Alfred G. Feliu, Esq. for his mediation services.
- 1.15** Net Settlement Fund. "Net Settlement Fund" shall mean the remainder of the Settlement Payment after deductions for court-approved attorneys' fees and costs as described in Section 3.2, court-approved service payment to Plaintiff as described in Section 3.3, the Claims Administrator's fees pursuant to Section 2.1, any fees associated with investing and liquidating the Settlement Payment as described in Section 3.1, and any taxes incurred directly or indirectly as a result of investing the Settlement Payment.
- 1.16** Order Granting Final Approval. "Order Granting Final Approval" shall mean the final Order entered by the Court after the Fairness Hearing.
- 1.17** Order Granting Preliminary Approval. "Order Granting Preliminary Approval" shall mean the Order entered by the Court preliminarily approving, inter alia, the terms and conditions of this Agreement, the manner and timing of providing notice to the Class, and the time period for opt-outs and objections.
- 1.18** Parties. "Parties" shall mean Plaintiff and Defendants.
- 1.19** Plaintiff. "Plaintiff" shall refer to Jeffrey Mayer and shall also include any and all representatives, heirs, administrators, executors, beneficiaries, agents, and assigns of Jeffrey Mayer, as applicable and without limitation.
- 1.20** Settlement Fund Account. "Settlement Fund Account" shall mean the FDIC insured account created and controlled by the Claims Administrator. To the extent that an interest-bearing vehicle that is also FDIC insured is available, the Claims Administrator shall use such vehicle.
- 1.21** Settlement Payment. "Settlement Payment" shall mean the \$475,000 payment, plus any interest accrued as provided in Section 3.1(A), that Defendants have agreed to pay to settle the Litigation.

2. APPROVAL AND CLASS NOTICE

- 2.1** Retention of Claims Administrator. The Claims Administrator shall be responsible for the claims administration process and distributions to Approved Claimants as provided herein. Class Counsel shall choose the Claims Administrator. Defendants agree to cooperate with the Claims Administrator and assist it in any way reasonably necessary to administer the Settlement. The Claims Administrator's fees shall be deducted from the Settlement Payment.

- 2.2** Preliminary Approval by the Court. Within 10 days of the date on which this Agreement is fully executed, Plaintiff will submit to the Court a Motion for an Order Conditionally Certifying the Class and Preliminarily Approving the Class Action Settlement (“Preliminary Approval Motion”). In connection with the Preliminary Approval Motion, Plaintiff will submit to the Court, among other things, (a) a proposed Notice of Settlement of the Class Action Lawsuit and Fairness Hearing, and (b) a proposed Order Granting Preliminary Approval, which shall include the findings required by Federal Rule of Civil Procedure 23(a) and (b)(3). The Preliminary Approval Motion will seek the setting of dates for opt-outs, objections, and a Fairness Hearing. Defendants will not oppose this application.
- 2.3** Denial of Preliminary Approval. If the Court denies the Motion for Preliminary Approval, then the Parties jointly agree to seek reconsideration of the ruling or seek Court approval of a renegotiated settlement. Should reconsideration and/or the Parties’ attempt to secure Court approval of a renegotiated settlement be denied, the case will proceed as if no settlement had been attempted, and Defendants retain all rights and defenses to and in the Litigation, including but not limited to the rights to contest whether this case should be maintained as a class action and to contest the merits of the claim being asserted by Plaintiff in this Litigation. In such a case, the Parties will negotiate and submit for Court approval a revised case management schedule.
- 2.4** Final Order and Judgment from the Court. Plaintiffs will seek to obtain from the Court, as a condition of settlement, a Final Order and Judgment. The Proposed Final Order and Judgment will, among other things, (a) certify the Class for purposes of settlement, (b) enter Judgment in accordance with this Agreement, (c) approve the settlement as fair, adequate, reasonable, and binding on all Class Members who have not timely opted out pursuant to Section 2.6(A), (d) dismiss the Litigation with prejudice, (e) enter an order permanently enjoining all Class Members who do not opt out from pursuing and/or seeking to reopen claims that have been released by this Agreement, and (f) incorporate the terms of this Settlement and Release. Defendants will not oppose this application.
- 2.5** Class Notice.
- (A) Within 5 business days of the date of the Order Granting Preliminary Approval, Defendants will provide the Claims Administrator with the Class List. With the exception of addresses and telephone numbers, this data, and any other data provided by Defendants to the Claims Administrator pursuant to this Agreement, shall be presumed to be accurate.
 - (B) Within 10 calendar days after receiving the Class List, the Claims Administrator shall mail, via First Class United States mail, postage prepaid, the Court-approved Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing and

Claims Form with an enclosed, pre-paid return envelope to all individuals on the Class List using each individual's last known address as recorded in Defendants' records. The Claims Administrator shall take all reasonable steps to obtain the correct address of any individual on the Class List for whom the notice is returned by the post office as undeliverable and shall attempt re-mailings as described below.

2.6 Class Member Opt-Out.

- (A) Any Class Member may request exclusion from the Class by "opting out." Class Members who choose to do so must mail a written, signed statement to the Claims Administrator that he or she is opting out of the monetary portion of the Settlement ("Opt-Out Statement"). The Opt-Out Statement must contain the name, address and telephone number of the Class Member to be valid. It must also contain the words "I elect to exclude myself from the settlement in Mayer v. Driver Solutions" in order to be valid. To be effective, such Opt-Out Statements must also be sent via First Class United States Mail and postmarked by a date certain to be specified on the Court Authorized Notice of Proposed Class Action Lawsuit Settlement and Fairness Hearing, which will be 30 calendar days after the Claims Administrator mails the Notice. The 30 day period will begin to run from the first mailing, except for those Class Members whose first mailing was returned to the Claims Administrator as undeliverable, in which case the 30 day period for any such Class Member will begin to run from the date of the second mailing (or, if there are more than 2 mailings, the final mailing) to such Class Member, unless another period is set by the Court. The Claims Administrator shall not attempt more than 2 mailings of the Notice of Proposed Class Action Lawsuit and Fairness Hearing to any Class Member. The end of the "Opt-Out Period" shall be 30 calendar days after the last day on which the Claims Administrator makes a mailing. The Claims Administrator shall, within 10 calendar days after the last day on which it makes such a mailing, notify Class Counsel and Defendants' Counsel of the precise date of the end of the Opt-Out Period.
- (B) The Claims Administrator shall stamp the postmark date on the original of each Opt-Out Statement that it receives and shall serve copies of each Statement on Class Counsel and Defendants' Counsel not later than 3 calendar days after receipt thereof. The Claims Administrator also shall, within 3 calendar days of the end of the Opt-Out Period, file with the Clerk of Court stamped copies of any Opt-Out Statements. The Claims Administrator shall, within 24 hours of the end of the Opt-Out Period, send a final list of all Opt-Out Statements to Class Counsel and Defendants' Counsel. The Claims Administrator shall retain the stamped

originals of all Opt-Out Statements and originals of all envelopes accompanying Opt-Out Statements in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Agreement.

2.7 Claims Process.

- (A) Class Members shall have 60 days to return their completed Claim Forms in order to be eligible to obtain a portion of the Net Settlement Fund. The 60 day period will begin to run from the first mailing, except for those Class Members whose first mailing was returned to the Claims Administrator as undeliverable, in which case the 60 day period for any such Class Member will begin to run from the date of the second mailing (or, if there are more than 2 mailings, the final mailing) to such Class Member, unless another period is set by the Court. Subject to any rights to cure as provided in Section 2.7(B), no Claim Forms will be honored if postmarked after the 60-day period has elapsed.
- (B) Submission of an incomplete Claim Form may render the Class Member's submission invalid if not fixed. A Claim Form will be considered incomplete if the Class Member failed to provide a response to each question on the Claim Form. In such circumstances, the Claims Administrator shall send a letter to the Class Member explaining the reason why the submitted Claim Form is incomplete and giving the Class Member thirty (30) days to cure the omission. If the Class Member does not cure, Class Counsel reserve the right to follow-up with the Class Member to try and assist him or her in completing the information. The cure must occur within 60 days total, i.e., Class Counsel have 30 days to work with the Class Member. The Claims Administrator shall only send a cure letter once pursuant to this Section to any Class Member. Failure to supply the missing information after given the opportunity to cure as provided in this Section shall render the Class Member's submission invalid.
- (C) The Claims Administrator shall cross-check the felony criminal history information self-reported in response to Questions 9 and 10 of the Claim Form with the information contained in Defendants' records, if such information exists. Where a discrepancy is found between the self-reported information and that which exists in Defendants' records, the Claims Administrator shall inform Class Counsel within 2 business days of the date on which it identifies the discrepancy. Class Counsel may then attempt to verify the information with the Claimant. Such attempt may include interviewing the Claimant and/or requesting that the Claimant produce evidence supporting the information he or she self-reported. As

soon as practicable, Class Counsel shall inform the Claims Administrator of its determination whether the Claimant should be deemed an Approved Claimant.

- (D) Within ten (10) business days after the deadline for all Claim Forms, the Claims Administrator shall provide a spreadsheet to Class Counsel and Defendants' Counsel that contains the following information: (i) identifying information for each Claimant, including name; (ii) the answers provided by each Claimant to each of the questions on the Claim Form; (iii) the date each Claim Form was postmarked; (iv) whether or not the Claim Form was complete or incomplete (and if incomplete, what information was missing); (v) which Claimants the Claims Administrator proposes to treat as Approved Claimants; (vi) the amount proposed to be paid to each Approved Claimant; and (vii) which Claim Forms the Claims Administrator has denied and the reasons for the denial. The Claims Administrator shall provide supplemental spreadsheets if needed within ten (10) business days after any deadlines to cure in accordance with Section 2.7(B) have expired. The Claims Administrator shall retain the originals of all Claim Forms (including the envelopes with the postmarks) received from Claimants and shall make copies or the originals available to Defendants or Class Counsel within one (1) business day upon request.
- (E) Class Counsel shall have the right to challenge a Claimant's eligibility to recover where there exists a good faith belief that a Claimant's submission may be invalid. Class Counsel shall also have the right to challenge the Claims Administrator's determinations regarding approval or denial of each Claim Form and the amount the Claims Administrator proposes to pay to each Claimant. However, in no event shall such challenge or any result of such challenge invalidate, void or otherwise affect any Claimant's release of claims against Defendants or the release by Claimants described in Section 3.7 of this Agreement.

2.8 Objections to Settlement.

- (A) Class Members who wish to present objections to the proposed settlement at the Fairness Hearing must first do so in writing. To be considered, such statement must be sent to the Claims Administrator via First-Class United States mail, postage prepaid, and be received by the Claims Administrator by a date certain, to be specified on the Court Authorized of Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing. The date certain for each Class Member shall be 30 days after the last mailing of the Notice by the Claims Administrator. The Claims Administrator shall stamp the date received on the original objection

and send copies of each objection to Class Counsel and Defendants' Counsel not later than 3 calendar days after receipt thereof. The Claims Administrator shall also file the date-stamped originals of any and all objections with the Clerk of Court within 3 calendar days after the end of the Opt-Out Period.

- (B) An objector also has the right to appear at the Fairness Hearing either in person or through counsel hired by the objector. An objector who wishes to appear at the Fairness Hearing must state his or her intention to do so at the time he/she submits his/her written objections. An objector may withdraw his/her objections at any time. No objector may appear at the Fairness Hearing unless he/she has filed a timely objection that complies with the procedures provided in Section 2.8(A). Any Class Member who has requested exclusion may not submit objections to the settlement.
- (C) The Parties may file with the Court written responses to any filed objections no later than 15 calendar days before the Fairness Hearing.

2.9 Motion for Judgment and Final Approval. No later than 15 calendar days before the Fairness Hearing, Plaintiffs will submit a Motion for Judgment and Final Approval. The Fairness Hearing shall be held at the Court's convenience.

2.10 Entry of Judgment. At the Fairness Hearing, the Parties will request that the Court, among other things, (a) certify the Class for purposes of settlement, (b) enter Judgment in accordance with this Agreement, (c) approve the settlement as fair, adequate, reasonable, and binding on all Class Members who have not timely opted out pursuant to Section 2.6, (d) dismiss the Litigation with prejudice, (e) enter an order permanently enjoining all Class Members who do not opt out from pursuing and/or seeking to reopen claims that have been released by this Agreement, and (f) incorporate the terms of this Agreement.

2.11 Effect of Failure to Grant Final Approval. In the event the Court fails to enter Judgment in accordance with this Agreement, or such Judgment does not become Final as defined herein, the Parties shall proceed as follows. The Parties jointly agree to (a) seek reconsideration of the decision denying entry of Judgment, or (b) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement. In the event any reconsideration is denied, or a mutually agreed-upon settlement is not approved:

- (A) The Litigation will proceed as if no settlement had been attempted. In that event, the class certified for purposes of settlement shall be decertified, and Defendants retain all rights and defenses to and in the Litigation, including but not limited to the rights to contest whether this Litigation should be maintained as a class action and to contest the merits of the claims being asserted by Plaintiff in this action.

- (B) The Court will provide notice to Class Members that the Agreement did not receive final approval and that, as a result, no payments will be made to Class Members under the Agreement. Such notice shall be mailed by the Claims Administrator via First Class United States Mail, postage prepaid, to the last address used by the Claims Administrator in mailing the Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing.
- (C) The full amount of the Settlement Payment deposited pursuant to Section 3.1(B), and all interest accrued thereon shall be returned to Defendants as soon as practicable.

3. SETTLEMENT TERMS

3.1 Settlement Payment.

- (A) Defendants agree to pay \$475,000, which shall resolve and satisfy: (a) court-approved attorneys' fees and costs; (b) all amounts to be paid to Approved Claimants; (c) the court-approved service payment to Plaintiff; (d) the Claims Administrator's fees; and (e) any fees associated with investing and liquidating the Settlement Payment. Other than the Mediator's Fees, Defendants will not be required to pay more than \$475,000 under this Agreement.
- (B) Within 21 days of the date on which the Court issues an Order Conditionally Certifying the Class and Preliminarily Approving the Class Action Settlement, Defendants shall cause to be deposited the \$475,000 Settlement Payment into the Settlement Fund Account. Any interest accrued from the Settlement Fund Account, net of taxes and any fees associated with investing such amount, shall immediately be added to and become part of the Settlement Payment.
- (C) Within 5 days of the Effective Date, the Claims Administrator will distribute the money in the Settlement Fund Account by making the following payments:
 - (1) Paying Class Counsel Court-approved attorneys' fees and costs as described in Section 3.2(A).
 - (2) Paying Plaintiff the amount described in Section 3.3.
 - (3) Paying Approved Claimants their portion of the Settlement Payment as described in Section 3.4.

3.2 Settlement Amounts Payable as Attorneys' Fees and Costs.

- (A) Prior to the Fairness Hearing, Class Counsel shall petition the Court for no more

than one-third of the Settlement Payment as an award of attorneys' fees. In addition, Class Counsel shall also seek reimbursement of reasonable litigation costs from the Settlement Payment, which shall not exceed \$10,000. Defendants will not oppose such applications.

- (B) The substance of Class Counsel's application for attorneys' fees and costs is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Judgment and Final Approval. Any monies not approved by the Court become part of the Net Settlement Fund.

3.3 Payment to Plaintiff. Prior to the Fairness Hearing, Plaintiff will apply to the Court to receive \$15,000 from the Settlement Fund for services rendered to the Class. Defendants will not oppose such application. The service payment and the requirements for obtaining such payment are separate and apart from, and in addition to, Plaintiff's recovery from the Net Settlement Fund. The substance of the above-referenced Plaintiff's application for a service award is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the application for service payments shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Judgment and Final Approval. Any monies not approved by the Court become part of the Net Settlement Fund.

3.4 Distribution to Approved Claimants.

- (A) Approved Claimants will be eligible for a payment hereunder, subject to the release set forth in Section 3.7(A).
- (B) To be deemed an Approved Claimant, a Claimant must:
 - (1) Return a Claim Form by the deadline set forth in his or her Court Authorized of Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing; and
 - (2) Answer each question in the Claim Form or comply with the cure provision set forth in Section 2.7(B);
- (C) A Claimant who complies with Section 3.4(B)(1) and (2) shall not be deemed an Approved Claimant if he or she:

- (1) Answers YES in response to Question 9 and checks off any box in response to Question 10; or
 - (2) Does not self-identify as “Hispanic, Latino, or Spanish,” in response to Question 7, or as “Black or African American,” in response to Question 8.
- (D) An Approved Claimant’s proportionate share of the Net Settlement Payment shall be determined by the Claims Administrator pursuant to the formula set forth below.

Points:

Each Approved Claimant shall earn 1 point for each week for which he or she was unemployed between January 24, 2009 and the present.

Calculation:

To calculate each Approved Claimant’s proportionate share:

- a. Add all points for all Approved Claimants together to obtain the “Total Denominator.”
 - b. Divide the number of points for each Approved Claimant by the Total Denominator to obtain each Approved Claimant’s “Portion of the Net Settlement Fund.”
 - c. Multiply each Approved Claimant’s Portion of the Net Settlement Fund by the Net Settlement Fund to determine each Approved Claimant’s “Settlement Award.”
- (E) The Claims Administrator shall mail to all each Approved Claimant his or her respective Settlement Award within 5 days of the Effective Date. The Claims Administrator shall use reasonable efforts to make an additional mailing to Approved Claimants whose checks are returned because of incorrect addresses. Such efforts shall include using social security numbers to obtain better address information and, for Approved Claimants whose payment is greater than \$100, attempting to call such Approved Claimants. Any additional efforts undertaken, if any, shall be in the sole discretion of the Claims Administrator.
- (F) If payments to Approved Claimants as described in this Section are not cashed within 90 days of the check date, the checks will be null and void and the money will remain in the Settlement Fund Account. If, in the view of the Claims Administrator, there are sufficient funds remaining in the Settlement Fund

Account 90 days after the payments described in Sections 3.1 have been distributed to make a second distribution, the Claims Administrator shall redistribute the money among Approved Claimants in pro-rata payments based on the formula set forth in this Section. If, in the Claims Administrator's view, a second distribution is not administrably feasible because insufficient funds remain in the Settlement Fund Account after the payments described in Sections 3.1 have been distributed, the money will be donated to the Pennsylvania Prison Society, Plaintiff's cy pres designee, subject to the Court's approval. There will be no reversion to Defendants.

3.5 Taxability of Settlement Payments. Payments shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name and social security number on an IRS Form 1099. Payments of attorneys' fees and costs pursuant to Section 3.2 shall be made without withholding. Class Counsel will receive a Form 1099 for this payment. Any service payment pursuant to Section 3.3 shall be made without withholding and reported to the IRS and the payee under the payee's name and social security number on an IRS Form 1099.

3.6 Prospective Relief.

- (A) Defendants agree that, in the event they are requested by one or more of the trucking companies for which they recruit inexperienced truck drivers, including, but not limited to, USA Truck, Inc., and P.A.M. Transportation Services, Inc., to conduct a criminal history background check on applicants, or otherwise screen applicants' criminal histories for purposes of employment, Defendants shall apply a criminal history policy consistent with that set forth in Exhibit B. Provided, however, that nothing in this Agreement shall prevent or restrict Defendants from or in soliciting, collecting, maintaining or distributing any criminal history information from or about any applicants consistent with their obligations under state and/or federal law.
- (B) In the event that USA Truck, Inc. invites Class Members to re-apply for employment with USA Truck, Inc. on a priority basis, this Agreement shall not require Defendants to screen such Class Members for employment. However, nothing herein relieves Defendants of their non-discrimination and non-retaliation obligations under federal and/or state law.

3.7 Release.

- (A) Release of Class Member Claims. By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement, each Class Member who does not timely opt-out shall release

Defendants and their respective officers, directors, agents, employees, attorneys, insurers and stop loss insurers from the claims brought in the Litigation, all disparate impact claims of alleged discrimination against African Americans and/or Latinos under state, municipal and common law related to the use or consideration of criminal history information regarding the employment or employment training or referral applications submitted to Defendants between January 24, 2009 and September 30, 2010, as well as interest, attorneys' fees, and costs with respect to such claims.

- (B) Release of Fees and Costs for Settled Matters. By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement, Class Counsel and Plaintiff, on behalf of the Class and each individual Class Member, irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Defendants for attorneys' fees or costs associated with Class Counsel's representation of Plaintiff and the Class. Class Counsel further understand and agree that any fee payments approved by the Court will be the full, final and complete payment of all attorneys' fees and costs associated with Class Counsel's representation of these individuals.
- (C) No Assignment. Class Counsel and Plaintiff, on behalf of the Class and each individual Class Member, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action.
- (D) Non-Admission of Liability. The Parties understand and agree that the payment and acceptance of the Settlement Payment and the execution of this Agreement are the result of compromise, that this Agreement is entered into in good faith, and that this Agreement shall never be considered at any time or for any purpose as an admission of liability by the Defendants or that the Defendants acted wrongfully with respect to the Plaintiff or any Class Member, or any other person, or that Plaintiff or any Class Member has any rights whatsoever against the Defendants, except as otherwise expressly set forth in this Agreement. Defendants specifically deny any liability to Plaintiff and the Class Members on the part of themselves, their employees, their agents, and their parent(s) or affiliated corporations and entities. This Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

3.8 Miscellaneous.

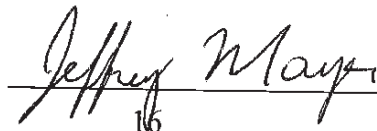
- (A) Cooperation Between the Parties; Further Acts. The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all of its terms. Each of the Parties, upon the request of any other party, at its own cost and expense, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- (B) Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- (C) Binding Effect. This Agreement shall be binding upon the Parties and, with respect to Plaintiff and the Class Members who do not exclude themselves, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.
- (D) Arms' Length Transaction; Materiality of Terms. The Parties have negotiated all the terms and conditions of this Agreement at arm's length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.
- (E) Captions. The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- (F) Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.
- (G) Blue Penciling. Following the Effective Date, if any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.
- (H) Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of Pennsylvania, without regard to

choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

- (I) Continuing Jurisdiction. The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby. The Court shall not have jurisdiction to modify the terms of the Agreement or to increase Defendants' payment obligations hereunder.
- (J) Waivers, etc. to Be in Writing. No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- (K) When Agreement Becomes Effective; Counterparts. This Agreement shall become effective upon its execution by all of the Parties. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if Plaintiff and Defendants had signed the same instrument.
- (L) Facsimile/Electronic Signatures. Any party may execute this Agreement by causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile or email to counsel for the other party. Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.

DATED: January 16, 2012

Jeffrey Mayer


16

DATED: January 17, 2012

Driver Solutions, Inc.

By: Michael f. Benkert

DATED: January 17, 2012

Driver Solutions, LLC

By: Michael f. Benkert

DATED: January 17, 2012

Driver Holdings, LLC

By: Michael f. Benkert

DATED: January 17, 2012

C&S Acquisition, Inc.

By: Michael f. Benkert

Exhibit A

CLAIM FORM
MAYER V. DRIVER SOLUTIONS

A. INSTRUCTIONS

1. Please answer all of the questions below truthfully and accurately.
2. Your answers will be kept confidential and will only be used for purposes of determining your eligibility to obtain a settlement award.
3. Your answers may be cross-checked based on information contained in Driver Solutions' records or verified through other means.
4. If you fail to answer all of the questions below or if you submit false information, you may be ineligible for any payment if the problem is not fixed in a timely manner.
5. Your Claim Form must be postmarked no later than [insert date 60 days from mailing]. Please use the enclosed pre-paid, self-addressed envelope. If you lose the envelope, mail your Claim Form to: [insert address of claims administrator].

B. PERSONAL INFORMATION

6. Please state your name and current address:

Name: _____
First Middle Last

Address: _____
Street Address

City State Zip

() - _____
Phone Number Secondary Phone Number

7. For identification purposes, please provide your Social Security Number: _____.

C. RACE AND ETHNICITY

8. Are you of Hispanic, Latino, or Spanish origin?
- ☐ Yes, I am of Hispanic, Latino, or Spanish origin.
- ☐ No, I am not of Hispanic, Latino, or Spanish origin.

9. Are you Black or African American?
- ☐ Yes, I am Black or African American.
- ☐ No, I am not Black or African American.

D. CRIMINAL HISTORY

10. My most recent criminal conviction was less than 10 years ago (between 2001 and the present).

- ☐ YES
- ☐ NO

11. If you answered YES to Question #9, identify the crime(s) for which you were convicted (check all boxes that apply):

- ☐ Within the last 5 years, I was convicted of driving under the influence (DUI).
- ☐ I was convicted of a felony involving use of a motor vehicle.
- ☐ I was convicted of a felony involving death or serious bodily injury to another person.
- ☐ I was convicted of felony theft, robbery, or fraud.
- ☐ (Optional) I checked off one of the boxes above and would like to explain the circumstances of my conviction (attach additional pages if necessary):

E. EMPLOYMENT HISTORY

12. I was employed for at least one month between January 24, 2009 and the present.

- ☐ YES
- ☐ NO

13. If you answered YES to Question #11, state your approximate dates of employment (include all dates of employment if you had multiple jobs):

F. SIGNATURE

I hereby affirm, under penalty of perjury, that the information I have provided on this Claim Form is true and correct to the best of my knowledge, and this is the only Claim Form that I have submitted.

Date: _____ Signature: _____

Exhibit B

Revised Hiring Criteria

(A) Driver Solutions shall not bar any applicant from gaining employment based on a felony conviction that is more than 10 years old or a misdemeanor conviction that is more than 5 years old at the time that the applicant applies, unless such conviction(s) are for crimes involving use of a motor vehicle (DUI/DWI); death; serious bodily injury; theft (burglary, robbery, and fraud); theft of a commercial motor vehicle or its cargo; acts of terrorism; felony sexual crimes of a serious nature; felony distribution/trafficking/manufacturing of drugs; in which case(s), in addition to the applicant's criminal record history, Driver Solutions may bar such applicant(s) from employment only upon giving equal consideration to the following factors in making such decision(s) (the "Mitigating Factors"):

- a. The nature and gravity of the conviction(s);
- b. Whether there is a direct relationship between the conviction(s) and the specific duties and responsibilities of the job sought such that the conviction is substantially likely to bear on the applicant's suitability for the job;
- c. Any information produced by the applicant in regard to his rehabilitation and good conduct since the date of the conviction(s);
- d. The age of the applicant at the time of the occurrence of the conviction(s);
- e. The length of time that has passed since the date of the conviction(s); and
- f. The nature of the job held or sought.

(B) With respect to felony convictions that are less than 10 years old and any misdemeanor convictions that are less than 5 years old at the time that the applicant applies, Driver Solutions shall give equal consideration to the Mitigating Factors in making the decision whether the applicant is suitable for hire.

(C) Notwithstanding the foregoing, an applicant may be barred from employment if the applicant was convicted of a felony or felonies and has been incarcerated because of such felony or felonies during the two (2) years preceding his/her application.

(D) The application of the Mitigating Factors is subject to and may be altered by future specific federal statutory and/or regulatory guidance.

Exhibit C

COURT-AUTHORIZED NOTICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

If you applied for a truck driver position with Driver Solutions between January 24, 2009 and September 30, 2010, you could receive a payment from a class action settlement.

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

- The Plaintiff, an applicant for an entry-level truck driver job, sued Driver Solutions on behalf of himself and other applicants claiming that its policy of barring applicants with criminal backgrounds from obtaining entry-level truck driver positions discriminated against African Americans and Latinos.
- Driver Solutions has denied discriminating against anyone based on their race, national origin or ethnicity and contends that all applicants have been treated fairly and in compliance with all laws.
- The Plaintiff and Driver Solutions have entered into a settlement to resolve this dispute. Driver Solutions does not admit any wrongdoing, but has agreed to make payment to the individuals who choose to participate in the settlement. The Court has not decided who is right and who is wrong. This settlement was entered into voluntarily between the parties and their attorneys without any findings of liability. You may be eligible to participate in the settlement.
- Your legal rights may be affected, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	This is the only way you get a payment. If you do not submit a Claim Form, you will not be eligible to participate in the settlement and you will release your claims without obtaining any compensation for them. <u>The Claim Form is the yellow document enclosed with this notice.</u>

1

QUESTIONS?

CONTACT RACHEL BIEN AT OUTTEN & GOLDEN LLP
3 PARK AVENUE, 29TH FLOOR, NY, NY 10016
DRIVERSOLUTIONSLAWSUIT@OUTTENGOLDEN.COM
(212) 245-1000 OR (877) 468-8836

EXCLUDE YOURSELF	By excluding yourself, you give up any right to receive a payment from this settlement. You will, however, keep any rights to sue Driver Solutions about the same legal claims in this lawsuit.
OBJECT	Write to the Court about why you do not like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.

BASIC INFORMATION

1. Why am I getting this notice?

You are getting this notice because Driver Solutions' records show that you applied for a truck driver position by submitting an online application through its website between January 24, 2009 and September 30, 2010, and that your application was rejected because of a past criminal conviction.

The purpose of this notice is to inform you of your rights and options **and the deadlines to exercise them** under the settlement of this lawsuit. The Court still has to decide whether to approve the settlement.

2. What is this lawsuit about?

The Plaintiff – the person who brought the lawsuit – sued Driver Solutions for allegedly rejecting his application for an entry-level truck driver position because of his past criminal conviction. The lawsuit alleges that Driver Solutions' policy of rejecting applicants with criminal histories has a disparate impact on African American and Latino applicants in violation of Title VII of the Civil Rights Act of 1964. The lawsuit seeks recovery of backpay, attorneys' fees, and costs, and an injunction preventing Driver Solutions from continuing to enforce its criminal background policy.

Driver Solutions denies that it did anything wrong and says that opportunities for hiring and job referral are equally available to all applicants, regardless of applicants' race, national origin or ethnicity. Driver Solutions says that its policies are clear and that they neither allow, nor condone, discrimination.

2

QUESTIONS?

CONTACT RACHEL BIEN AT OUTTEN & GOLDEN LLP
 3 PARK AVENUE, 29TH FLOOR, NY, NY 10016
 DRIVERSOLUTIONSLAWSUIT@OUTTENGOLDEN.COM
 (212) 245-1000 OR (877) 468-8836

The Honorable J. Curtis Joyner, United States District Court Judge in the Eastern District of Pennsylvania, is overseeing this class action. The lawsuit is known as *Mayer v. Driver Solutions, Inc., et al.*, No. 10 Civ. 1939.

3. Why is this a class action?

In a class action, one or more individuals called Class Representatives sue on behalf of others who have the same or similar claims. Here, the Plaintiff is the “Class Representative.” The people with the same or similar claims are called “Class Members.” In class actions, one court resolves the issues for all Class Members, except for those who decide to exclude themselves from the Class, as explained in paragraph 10 below.

4. Why is there a settlement?

The Court did not decide in favor of the Plaintiff or Driver Solutions. Both sides believe they would have prevailed at trial, but there was no trial. Instead, both sides agreed to a settlement. That way they avoid the cost of a trial, the risk of an uncertain outcome at trial, and the risk that Driver Solutions would not have been able to pay a judgment if the Plaintiff had prevailed at trial; nevertheless, the people affected will get compensation. The Plaintiff and the attorneys for the Class Members think the settlement is best for all involved.

THE SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the settlement provide?

Driver Solutions has agreed to pay money into a settlement fund that will be divided among the Plaintiff and Class Members who submit a Claim Form and who are determined to be eligible to participate in the settlement. The money in the settlement fund will be divided and paid out to participants in the settlement based on the information that Class Members provide in their Claim Forms.

The settlement also asks the Court to approve a service payment to the Plaintiff from the settlement fund in the amount of \$15,000 in recognition of the many hours of service he gave to the Class by, among other things, supplying documents, sitting for a deposition, and helping the attorneys investigate and prosecute the claims on behalf of the class.

6. How much will my payment be?

If you are determined to be eligible to receive a payment from the settlement, the amount of your payment will depend on the information you provide in your Claim Form and the participation rate, *i.e.*, the number of class members who submit claim forms and are determined to be eligible

3

QUESTIONS?

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3 PARK AVENUE, 29TH FLOOR, NY, NY 10016
DRIVERSOLUTIONSLAWSUIT@OUTTENGOLDEN.COM
(212) 245-1000 OR (877) 468-8836

to obtain a monetary award. The chart below shows estimates of the average payments that Class Members who submit Claim Forms may receive based on the participation rate:

Participation Rate:	Average Amount:
5% of all class members	\$909
10% of all class members	\$454
25% of all class members	\$181
50% of all class members	\$90

HOW YOU GET A PAYMENT

7. How can I get a payment?

You must submit a Claim Form in order to receive a payment. A claims administrator will review the answers you provide in your Claim Form and determine whether you are eligible to receive a payment and, if so, how much your payment will be.

Your completed Claim Form must be postmarked no later than **[INSERT DATE 60 DAYS FROM DATE OF MAILING]** and must be mailed to:

[CLAIMS ADMINISTRATOR ADDRESS TO BE INSERTED]

8. When will I get my payment?

If the claims administrator determines that you are eligible to receive a payment, your check will be mailed within approximately 35 days of the date on which the Court grants final approval of the settlement, unless there is an appeal.

QUESTIONS?

CONTACT RACHEL BIEN AT OUTTEN & GOLDEN LLP
3 PARK AVENUE, 29TH FLOOR, NY, NY 10016
DRIVERSOLUTIONSLAWSUIT@OUTTENGOLDEN.COM
(212) 245-1000 OR (877) 468-8836

9. What if I do not submit a Claim Form?

If you do not submit a Claim Form and do not exclude yourself as explained in paragraph 10, you will not receive a payment and will give up any right to sue, continue to sue, or be a party of any other lawsuit against Driver Solutions with respect to the legal issues in the lawsuit. It also means that all of the Court's orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE SETTLEMENT

You may exclude yourself from class. The process of excluding yourself is also sometimes referred to as "opting out." If you ask to be excluded from the settlement, you will not receive a settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You will also keep any rights to sue Driver Solutions about the legal claims alleged in the lawsuit.

10. How do I exclude myself from the settlement?

To exclude yourself from the settlement, you must send a letter by First Class U.S. mail stating, "I elect to exclude myself from the settlement in *Mayer v. Driver Solutions, Inc., et al.*, No. 10 Civ. 1939." Be sure to include your name, address, telephone number, and your signature. Your exclusion request must be received no later than **INSERT DATE 30 DAYS FROM DATE OF MAILING** and must be mailed to:

[CLAIMS ADMINISTRATOR ADDRESS TO BE INSERTED]

11. What am I giving up if I do not exclude myself?

Unless you exclude yourself, you will remain a Class Member. That means that you cannot sue, continue to sue, or be a party of any other lawsuit against Driver Solutions with respect to the legal issues in the lawsuit. It also means that all of the Court's orders will apply to you and legally bind you.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

12. How do I tell the Court that I object to the settlement?

You can object to the settlement agreement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter via U.S. Mail stating that you object to the settlement agreement in *Mayer v. Driver Solutions, Inc., et al.*, No. 10 Civ. 1939, and stating the reasons why you object. Be sure to include your name, address, telephone number, and signature. Any objections must be received by **INSERT DATE 30 DAYS FROM DATE OF MAILING**, and mailed to:

[CLAIMS ADMINISTRATOR ADDRESS TO BE INSERTED]

13. What's the difference between objecting to the settlement and excluding myself from it?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you do not exclude yourself from the class. Excluding yourself is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Yes. The Court has decided that the lawyers at the law firms of Outten & Golden LLP and Community Legal Services of Philadelphia are qualified to represent you and all of the other Class Members. These lawyers have been designated as "Class Counsel" in this lawsuit. More information about the law firms, their practices, and their lawyers' experience are available at www.outtengolden.com and www.clsphila.org.

15. How will the lawyers be paid?

The Plaintiff has entered into a retainer agreement with Class Counsel. Under the agreement, Class Counsel will ask the Court to approve up to one-third of the settlement amount as their attorneys' fees. The fees will pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also ask the Court to approve the reimbursement of their out-of-pocket costs in the amount of \$10,000. You may ask for a copy of the retainer agreement by calling or writing Class Counsel at the telephone number or address below.

THE COURT'S FAIRNESS HEARING

The Court will hold a fairness hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

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

The Court will hold a fairness hearing at [INSERT TIME] on [INSERT DATE] at the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA before Judge J. Curtis Joyner in Courtroom ____.

At the fairness hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are any objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the settlement. We do not know how long the Court's decision will take.

17. Do I have to come to the fairness hearing?

No, even if you filed an objection, Class Counsel will represent you at the hearing. Of course, you are welcome to attend (at your own expense) if you so desire. The Court will consider any objections received in a timely manner, even if the individual who sent in the objection does not appear at the fairness hearing. You may also pay your own lawyer to attend the fairness hearing, but it is not necessary.

18. May I speak at the fairness hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter stating, "Notice of Intention to Appear in *Mayer v. Driver Solutions, Inc., et al.*, No. 10 Civ. 1939." Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than **INSERT DATE 30 DAYS FROM DATE OF MAILING**, and mailed to:

[CLAIMS ADMINISTRATOR ADDRESS TO BE INSERTED]

Again, you cannot speak at the hearing if you exclude yourself from the settlement agreement.

GETTING MORE INFORMATION

19. Are there more details about the settlement?

You can obtain more information about the settlement or obtain a copy of the settlement agreement by contacting Class Counsel at:

Rachel Bien
Outten & Golden LLP
3 Park Avenue, 29th Floor
New York, NY 10016
212-245-1000

DriverSolutionsLawsuit@outtengolden.com

If you call or write, you should refer to the Driver Solutions case.

DATED: [INSERT MONTH] __, 2012

QUESTIONS?

CONTACT RACHEL BIEN AT OUTTEN & GOLDEN LLP
3 PARK AVENUE, 29TH FLOOR, NY, NY 10016
DRIVERSOLUTIONSLAWSUIT@OUTTENGOLDEN.COM
(212) 245-1000 OR (877) 468-8836

Exhibit D

CLAIM FORM
MAYER V. DRIVER SOLUTIONS

A. INSTRUCTIONS

1. Please answer all of the questions below truthfully and accurately.
2. Your answers will be kept confidential and will only be used for purposes of determining your eligibility to obtain a settlement award.
3. Your answers may be cross-checked based on information contained in Driver Solutions' records or verified through other means.
4. If you fail to answer all of the questions below or if you submit false information, you may be ineligible for any payment if the problem is not fixed in a timely manner.
5. Your Claim Form must be postmarked no later than [insert date 60 days from mailing]. Please use the enclosed pre-paid, self-addressed envelope. If you lose the envelope, mail your Claim Form to: [insert address of claims administrator].

B. PERSONAL INFORMATION

6. Please state your name and current address:

Name: _____
First Middle Last

Address: _____
Street Address

City State Zip

() - _____
Phone Number Secondary Phone Number

7. For identification purposes, please provide your Social Security Number: _____.

C. RACE AND ETHNICITY

8. Are you of Hispanic, Latino, or Spanish origin?
- ☐ Yes, I am of Hispanic, Latino, or Spanish origin.
- ☐ No, I am not of Hispanic, Latino, or Spanish origin.

9. Are you Black or African American?
- ☐ Yes, I am Black or African American.
- ☐ No, I am not Black or African American.

D. CRIMINAL HISTORY

10. My most recent criminal conviction was less than 10 years ago (between 2001 and the present).

- ☐ YES
- ☐ NO

11. If you answered YES to Question #9, identify the crime(s) for which you were convicted (check all boxes that apply):

- ☐ Within the last 5 years, I was convicted of driving under the influence (DUI).
- ☐ I was convicted of a felony involving use of a motor vehicle.
- ☐ I was convicted of a felony involving death or serious bodily injury to another person.
- ☐ I was convicted of felony theft, robbery, or fraud.
- ☐ (Optional) I checked off one of the boxes above and would like to explain the circumstances of my conviction (attach additional pages if necessary):

E. EMPLOYMENT HISTORY

12. I was employed for at least one month between January 24, 2009 and the present.

- ☐ YES
- ☐ NO

13. If you answered YES to Question #11, state your approximate dates of employment (include all dates of employment if you had multiple jobs):

F. SIGNATURE

I hereby affirm, under penalty of perjury, that the information I have provided on this Claim Form is true and correct to the best of my knowledge, and this is the only Claim Form that I have submitted.

Date: _____ Signature: _____