

KAHN SWICK & FOTI, LLC

Kim E. Miller (SBN 178370)

kim.miller@ksfcounsel.com

250 Park Avenue, 7th Floor

New York, NY 10177

Telephone: (212) 696-3730

Facsimile: (504) 455-1498

*Lead Counsel for Lead Plaintiff Timothy M. Weis,
Additional Plaintiff Angelo Federico, and the Settlement Class*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SAM FARRAR, Individually and on
Behalf of All Others Similarly Situated,
Plaintiff,

v.

WORKHORSE GROUP, INC., DUANE
HUGHES, STEVE SCHRADER,
ROBERT WILLISON, and GREGORY
ACKERSON

Defendants.

Case No. 2:21-cv-02072-CJC-PVC

STIPULATION OF SETTLEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 This Stipulation of Settlement dated January 13, 2023 (the “Stipulation”) is
2 made and entered into by and among: (i) Lead Plaintiff Timothy M. Weis and
3 Additional Plaintiff Angelo Federico (“Plaintiffs”), on behalf of themselves and each
4 of the Settlement Class Members, by and through their counsel of record; and (ii)
5 Workhorse Group Inc. (“Workhorse” or “Company”), Duane Hughes, Steve
6 Schrader, Robert Willison, and Gregory Ackerson (collectively, Defendants), by and
7 through their counsel of record. The Stipulation is intended to fully, finally, and
8 forever resolve, discharge, and settle the Released Claims (as defined herein),
9 subject to the approval of the Court and the terms and conditions set forth in this
10 Stipulation.

11 **I. THE LITIGATION**

12 The initial complaint in this Action was filed on March 8, 2021. ECF No. 1.
13 Three days later, a second, substantially similar complaint was filed in *Kinney v.*
14 *Workhorse Group, Inc., et al*, No. 2:21-cv-02207-CJC-PVC (C.D. Cal.). On March
15 8, 2021, notice that a class action had been initiated against Defendants was
16 published on *Business Wire*, a widely-circulated national business-oriented wire
17 service, advising members of the proposed Class of their right to move to serve as
18 lead plaintiff within 60 days of publication of the Notice. ECF No. 31-1.

19 Nine competing motions for appointment as lead plaintiff were filed, but by
20 May 17, 2021, all movants other than Mr. Weis had filed notices of withdrawal or
21 non-opposition to competing motions. ECF No. 57. On May 18, 2021, the Court
22 issued an order consolidating the two actions, appointing Mr. Weis as Lead Plaintiff,
23 and approving the selection of Kahn Swick & Foti LLC (“KSF”) as Lead Counsel.
24 ECF No. 61.

25 On July 16, 2021, after conducting an extensive investigation involving
26

1 interviews of former employees as well as substantial legal and fact research and
2 review of news reports, Lead Plaintiff filed the Amended Complaint for Violation
3 of Federal Securities Law against Defendants, naming Mr. Federico as an Additional
4 Plaintiff. ECF No. 64. In the Amended Complaint, Plaintiffs alleged that
5 Defendants: (1) made materially false and misleading statements regarding the
6 Company's production and manufacturing capabilities, "backlog" of purchase
7 orders, and positioning for a multi-billion dollar contract with the United States
8 Postal Service ("USPS") to manufacture its new fleet of approximately 165,000 next
9 generation delivery vehicles ("NGDV"), in violation of Sections 10(b) and 20(a) of
10 the Exchange Act and Rules 10b-5(b) promulgated thereunder, and (2) engaged in a
11 scheme to defraud investors into believing, among other things, that Workhorse was
12 capable of winning the NGDV Contract, in violation of Rule 10b-5(a) and (c).

13 Defendants moved to dismiss the Amended Complaint (ECF No. 65).
14 Plaintiffs opposed. ECF No. 70. Defendants replied. ECF No. 72. On December 2,
15 2021, the Court denied, in substantial part, Defendants' motion to dismiss. ECF No.
16 74.

17 Following the ruling on Defendants' motion to dismiss, the Parties began
18 formal discovery. The Parties exchanged initial disclosures, pursuant to Rule
19 26(a)(1) of the Federal Rules of Civil Procedure, on January 14, 2022. In the ensuing
20 months, Plaintiffs served written discovery on Defendants, including Requests for
21 Production and Interrogatories. Plaintiffs also issued 18 document subpoenas to
22 third parties, including Workhorse's Class Period accountant and numerous
23 customers of Workhorse. Counsel for the Parties also engaged in numerous meet-
24 and-confer discussions and exchanged written correspondence in order to address
25 the Parties' respective objections with respect to written discovery requests and
26

1 subpoenaed and to seek to reach agreement on the scope of document and deposition
2 discovery, including negotiating search terms and custodians and discussing
3 electronically-stored information and other sources of potentially relevant
4 information. Plaintiffs also exchanged extensive written correspondence and
5 conducted meet-and-confers with numerous subpoenaed third parties. Plaintiffs
6 collected and analyzed over 100,000 pages of documents from Defendants and third
7 parties. Plaintiffs also sent a Notice of 30(b)(6) Deposition to Workhorse and began
8 preparing for this deposition and the anticipated depositions of third-party VT
9 Hackney, Workhorse's initial partner on the NGDV Contract, as well as several
10 current, well-placed Workhorse employees with knowledge of the NGDV Contract,
11 Workhorse's production capabilities, and other topics central to Plaintiffs' claims.
12 Plaintiffs also reached out to Defendants to coordinate on specific dates for
13 depositions of Bill Mahlock, Workhorse's former Director of Dealer and Support
14 Operations, and Daniel Zito, Workhorse's former Director of Business
15 Development.

16 Believing it to be in all Parties' best interests, the Parties engaged the services
17 of Jed D. Melnick of JAMS, a nationally recognized mediator. After a full-day, in-
18 person mediation in New York City on August 23, 2022, no settlement was reached.
19 After ongoing negotiations and discussions, on October 26, 2022, the Parties
20 executed a term sheet agreeing in principle to settle the Action, after all Parties
21 accepted a proposal from the mediator for a settlement with a total value of \$35
22 million, consisting of (i) \$15 million in cash to be paid, or caused to be paid, by
23 Workhorse and (ii) \$20 million in Workhorse common stock based on the volume
24 weighted average price for the fifteen (15) consecutive trading days ending on the
25 trading day immediately preceding the date the Court enters the Judgment.

1 and among Plaintiffs (on behalf of themselves and all other Settlement Class
2 Members) and Defendants, by and through their attorneys of record, that, subject to
3 the approval of the Court, the Action and the Released Claims shall be finally and
4 fully compromised, settled, and released, and the Action shall be dismissed with
5 prejudice, as to all Parties, upon and subject to the terms and conditions of the
6 Stipulation, as follows.

7 **1. Definitions**

8 As used in the Stipulation, the following terms have the meanings specified
9 below:

10 *The Parties*

11 1.1 “Ackerson” means Gregory Ackerson, former Controller and current
12 Chief Accounting Officer of Workhorse.

13 1.2 “Additional Plaintiff” means Angelo Federico.

14 1.3 “Lead Counsel” means KSF.

15 1.4 “Defendants” means Workhorse, Hughes, Schrader, Willison, and
16 Ackerson, collectively.

17 1.5 “Defendants’ Counsel” means Sheppard, Mullin, Richter & Hampton
18 LLP, counsel for Defendants Workhorse and Ackerson, and Katten Muchin
19 Rosenman LLP, counsel for Defendants Hughes, Schrader, and Willison.

20 1.6 “Hughes” means Duane Hughes, former Chief Executive Officer of
21 Workhorse.

22 1.7 “KSF” means Kahn Swick & Foti, LLC.

23 1.8 “Individual Defendants” means Hughes, Schrader, Willison, and
24 Ackerson.

25 1.9 “Lead Plaintiff” means Timothy Weis.

1 1.10 “Plaintiffs” means Timothy Weis and Angelo Federico, collectively.

2 1.11 “Schrader” means Steve Schrader, former Chief Financial Officer of
3 Workhorse.

4 1.12 “Willison” means Robert Willison, former Chief Operating Officer of
5 Workhorse.

6 1.13 “Workhorse” or the “Company” means Workhorse Group Inc. and its
7 predecessors and successors.

8 Additional Defined Terms

9 1.14 “Action” means the above-captioned case.

10 1.15 “Authorized Claimant” means any Settlement Class Member whose
11 claim for recovery has been allowed pursuant to the terms of the Stipulation.

12 1.16 “Claimant” means any Settlement Class Member who files a Proof of
13 Claim in such form and manner, and within such time, as the Court shall prescribe.

14 1.17 “Claims Administrator” means KCC Class Action Services, LLC.

15 1.18 “Claim Form” shall have the meaning set forth in ¶ 3.2 of this
16 Stipulation.

17 1.19 “Class Period” means the period between March 10, 2020, and May 10,
18 2021, inclusive.

19 1.20 “Court” means the United States District Court for the Central District
20 of California, Southern Division.

21 1.21 “Effective Date,” or the date upon which this Settlement becomes
22 “effective,” means the date by which all of the events and conditions specified in
23 ¶ 7.1 of the Stipulation have occurred.

24 1.22 “Escrow Account” means an interest-bearing account maintained by
25 the Escrow Agent.

1 1.23 “Escrow Agent” means KSF.

2 1.24 “Exhibits” means all the exhibits to the Stipulation, including Exhibit
3 A, Exhibit A-1, Exhibit A-2, Exhibit A-3, Exhibit A-4, and Exhibit B.

4 1.25 “Fee and Expense Application” shall have the meaning set forth in ¶
5 6.1 of this Stipulation.

6 1.26 “Fee and Expense Award” shall have the meaning set forth in ¶ 5.2(c)
7 of this Stipulation.

8 1.27 “Final” means when the last of the following with respect to the
9 Judgment shall occur: (i) the expiration of the time to file a motion to alter or amend
10 the Judgment under Federal Rule of Civil Procedure 59(e) has passed without any
11 such motion having been filed; (ii) the expiration of the time in which to appeal the
12 Judgment has passed (including to the extent that the time to appeal has been
13 extended in a manner provided for in the Federal Rules of Civil Procedure) without
14 any appeal having been taken, unless the date to take such an appeal shall have been
15 extended by Court order; (iii) if a motion to alter or amend the Judgment is timely
16 filed, the motion is denied; and (iv) if an appeal is taken, either (a) the appeal has
17 been dismissed and the time, if any, for commencing any further appeal has expired,
18 or (b) the Judgment has been affirmed in its entirety and the time, if any, for
19 commencing any further appeal has expired. For purposes of this paragraph, an
20 “appeal” shall include any petition for a writ of certiorari or other writ that may be
21 filed in connection with approval or disapproval of this Settlement but shall not
22 include any appeal that concerns only the issue of attorneys’ fees and reimbursement
23 of costs or payments to Plaintiffs or the Plan of Allocation.

1 forum that arise out of or are based upon or related to the purchase, sale, acquisition,
2 disposition or holding of Workhorse securities during the Class Period (including,
3 without limitation, claims in connection with, relating to or arising from any public
4 statement made or omissions to make statements by any Defendant during the Class
5 Period and/or any of the allegations, transactions, facts, events, acts, failures to act,
6 matters or occurrences that were or could have been alleged, asserted, contended, set
7 forth, related to or referred to in the Action by Plaintiffs or Settlement Class
8 Members). Released Claims includes “Unknown Claims” as defined in ¶ 1.46 of
9 this Stipulation. “Released Claims” excludes claims to enforce the Settlement.

10 1.35 “Released Defendants’ Claims” means all claims (including but not
11 limited to Unknown Claims), demands, losses, rights, and causes of action of any
12 nature whatsoever, that have been or could have been asserted in the Action by the
13 Released Defendants’ Parties, individually or in concert, against any of the
14 Releasing Plaintiffs’ Parties, which arise out of or relate in any way to the institution,
15 prosecution, assertion, settlement, or resolution of the Action (except for claims to
16 enforce the Settlement).

17 1.36 “Released Defendants’ Parties” means each and all of the Defendants,
18 each of their respective spouses and immediate family members (for individuals)
19 and past, present and future direct and indirect parent entities, parent corporations,
20 sister corporations, subsidiaries, related entities and affiliates, and, as applicable,
21 their respective past and present general partners, limited partners, principals,
22 shareholders, investors (however denominated), joint ventures, members, officers,
23 directors, managers, managing directors, supervisors, employees, contractors,
24 servants, consultants, auditors, accountants, financial advisors, professional
25 advisors, investment bankers, representatives, insurers, reinsurers, receivers,
26

1 trustees, trustors, agents, attorneys, legal representatives, professionals,
2 predecessors, successors, assigns, assignors, legatees, devisees, estates, settlors,
3 beneficiaries, heirs, executors, successors-in-interest, administrators, and any
4 controlling person thereof.

5 1.37 “Releasing Plaintiffs’ Parties” means each and all of the Plaintiffs and
6 members of the Settlement Class, and, as applicable, their respective family
7 members, and their respective past, present and future general partners, limited
8 partners, principals, shareholders, investors (however denominated), joint ventures,
9 members, officers, directors, managers, managing directors, supervisors, employees,
10 contractors, consultants, auditors, accountants, financial advisors, professional
11 advisors, investment bankers, representatives, insurers, trustees, trustors, agents,
12 attorneys, professionals, predecessors, successors, assigns, heirs, executors,
13 administrators, and any controlling person thereof. Releasing Plaintiffs’ Parties do
14 not include any Person who timely and validly seeks exclusion from the Settlement
15 Class.

16 1.38 “Settlement” means the settlement embodied in this Stipulation.

17 1.39 “Settlement Amount” means the total amount of Thirty-Five Million
18 U.S. Dollars (\$35,000,000), with Fifteen Million U.S. Dollars (\$15,000,000) to be
19 provided in cash (the “Settlement Cash”), and the remainder to be paid in the form
20 of shares of Workhorse common stock (the “Settlement Stock”) pursuant to ¶ 2.4 of
21 this Stipulation, based on the volume weighted average price for the fifteen (15)
22 consecutive trading days ending on the trading day immediately preceding the date
23 the Court enters the Judgment (the “VWAP”).

24 1.40 “Settlement Class” means all Persons who purchased or otherwise
25 acquired Workhorse securities during the Class Period and were damaged thereby,
26

1 excluding Defendants, officers, and directors of Workhorse, members of their
2 immediate families and their legal representative, heirs, successors, or assigns, and
3 any entity in which Defendants have or had a controlling interest. Also excluded
4 from the Settlement Class are those Persons who timely and validly request
5 exclusion from the Class.

6 1.41 “Settlement Class Member” means a Person who falls within the
7 definition of the Settlement Class as set forth in ¶ 1.40 of this Stipulation.

8 1.42 “Settlement Fund” means the Settlement Amount, deposited, or to be
9 deposited, into the Escrow Account, pursuant to ¶¶ 2.2 to 2.4 of this Stipulation, plus
10 all interest earned thereon pursuant to ¶¶ 2.3 and 2.12 of this Stipulation.

11 1.43 “Settlement Hearing” shall have the meaning set forth in ¶ 3.3 of this
12 Stipulation.

13 1.44 “Stipulation” shall have the meaning set forth in the introductory
14 paragraph of this document;

15 1.45 “Summary Notice” shall have the meaning set forth in ¶ 3.2 of this
16 Stipulation;

17 1.46 “Unknown Claims” means any and all claims, demands, rights,
18 liabilities, and causes of action of every nature and description which Plaintiffs,
19 Settlement Class Members, or any Defendant does not know or suspect to exist in
20 his, her or its favor at the time of their release of the Released Claims or the Released
21 Defendants’ Claims, and including, without limitation, those which, if known by
22 him, her or it, might have affected his, her or its decision(s) with respect to the
23 Settlement, including the decision to object to the terms of the Settlement or to
24 exclude himself, herself, or itself from the Settlement Class.

1 five (5) days after the Settlement becomes Final, as defined in ¶ 1.27 hereof (the
2 “Transfer Date”). All costs associated with the transfer of the Settlement Stock to
3 the Escrow Account shall be borne by Workhorse. If, at market close on the trading
4 day before the Transfer Date, the price per share stock deviates more than 25% above
5 or below the VWAP, the number of shares of Settlement Stock shall be adjusted
6 such that the overall value of the Settlement Stock is Twenty Million Dollars
7 (\$20,000,000). No fractional shares of Settlement Stock will be issued; the
8 calculation of the number of shares to be distributed will be rounded up to the nearest
9 whole share.

10 2.5 Upon receipt of the Settlement Stock, the Escrow Agent shall hold the
11 Settlement Stock as fiduciaries for the benefit of the Settlement Class Members. The
12 Escrow Agent shall, at its sole discretion, either: (i) sell the Settlement Stock
13 proportionally over a period of thirty (30) trading days from the Transfer Date, with
14 the proceeds of such sales placed in the Settlement Fund for the benefit of the
15 Settlement Class Members; or (ii) distribute the Settlement Stock to Settlement Class
16 Members who submit a valid claim in two equal distributions, the first distribution
17 occurring within fifteen (15) to twenty (20) trading days after the entry of an Order
18 by the Court approving Final Distribution of the Net Settlement Fund and the second
19 distribution occurring fifteen (15) to twenty (20) trading days after the first
20 distribution. The Escrow Agent shall have no liability for any sale, liquidation,
21 transfer, or other disposition of the Settlement Stock absent gross negligence or
22 willful misconduct.

23 2.6 The Settlement Stock shall be unrestricted and freely tradeable, except
24 as otherwise provided in the Stipulation, and either registered or exempt from
25 registration under the Securities Act pursuant to section 3(a)(10) of the Securities
26

1 Act, 15 U.S.C. § 77c(a)(10), in that the Settlement Stock will be issued to or for the
2 benefit of Settlement Class Members in exchange for their release of claims against
3 the Defendants under the terms of the Stipulation. Pursuant to Section 3(a)(10) of
4 the Securities Act, the Court’s judgment of the fairness of the Settlement may serve
5 as a substitute for the registration requirements of the Securities Act with regard to
6 any Settlement Stock. In the alternative, Workhorse, in its sole discretion, shall have
7 the right to file a registration statement with the Securities and Exchange
8 Commission covering the issuance of the Settlement Stock.

9 2.7 The Settlement Stock may be sold or transferred by recipients thereof
10 who are not affiliates of Workhorse (as that term is defined in Rule 144 of the 1933
11 Act) or recipients deemed to be underwriters under the 1933 Act without registration
12 under § 5 of the 1933 Act or compliance with Rule 144. To the extent applicable,
13 the number of shares constituting the Settlement Stock will be adjusted to account
14 for stock splits, reverse stock splits, and other similar actions taken by Workhorse.
15 If Workhorse is sold, acquired or merges prior to distribution of the Settlement Stock
16 to the Settlement Class, the shares will be treated for purposes of any corporate
17 transaction as if they had been issued, distributed and outstanding, and will receive
18 the same proportionate treatment as other shares of Workhorse, and for the purposes
19 of this Settlement such shares shall be valued consistent with the terms in ¶ 2.4
20 hereof, for the fifteen (15) consecutive trading days ending on the trading day
21 immediately preceding the announcement of any sale, acquisition or merger.

22 2.8 Other than with respect to the obligations undertaken by Workhorse
23 described in ¶ 2.4 hereof, Defendants shall have no liability with respect to, or
24 responsibility for, the sale of the Settlement Stock, or with respect to the trading
25 value of, or any losses incurred by any party with respect to, any Settlement Stock.
26

1 2.9 This is not a claims-made settlement. Defendants will have no ability
2 to recapture any of the Settlement Amount unless the Settlement is terminated or
3 does not become effective as set forth in Section 7 of this Stipulation.
4 Simultaneously herewith, the Parties, by and through their respective counsel, are
5 executing a Supplemental Agreement, which shall remain confidential unless
6 otherwise ordered by the Court, which gives Defendants the right, but not the
7 obligation, to terminate the Settlement in the event that a certain portion of the
8 Settlement Class delivers timely and valid requests for exclusion from the Settlement
9 Class (the “Supplemental Agreement”). The Supplemental Agreement shall be made
10 available for *in camera* review upon the Court’s request.

11 2.10 With the sole exception of Defendants’ obligation to secure payment of
12 the Settlement Amount into the Escrow Account as provided for in ¶¶ 2.3 and 2.4
13 hereof, the Released Defendants’ Parties shall have no responsibility for, interest in,
14 or liability whatsoever with respect to: (i) any act, omission, or determination by
15 Lead Counsel or the Claims Administrator, or any of their respective designees, in
16 connection with the administration of the Settlement or otherwise; (ii) the
17 management, investment, or distribution of the Settlement Fund; (iii) the Plan of
18 Allocation; (iv) the determination, administration, calculation, or payment of any
19 claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation
20 in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes,
21 expenses, and/or costs incurred in connection with the taxation of the Settlement
22 Fund, distributions or other payments from the Escrow Account, or the filing of any
23 federal, state, or local tax returns.

24 2.11 With the sole exception of Defendants’ obligation to secure payment of
25 the Settlement Amount into the Escrow Account as provided for in ¶¶ 2.3 and 2.4
26

1 hereof, Released Defendants' Parties shall have no obligation to make any other
2 payments into the Escrow Account or to any Settlement Class Member pursuant to
3 this Stipulation.

4 **B. The Escrow Agent**

5 2.12 The Escrow Agent shall invest the Settlement Fund, or any portion
6 thereof, in instruments backed by the full faith and credit of the United States
7 Government or fully insured by the United States Government or its agencies and
8 shall reinvest the proceeds of these instruments as they mature in similar instruments
9 at their then-current market rates.

10 2.13 Subject to further order and/or direction as may be made by the Court,
11 the Escrow Agent is authorized to execute transactions on behalf of the Settlement
12 Class Members that are consistent with the terms of the Stipulation.

13 2.14 All funds held by the Escrow Agent shall be deemed and considered to
14 be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the
15 Court until such time as such funds shall be distributed pursuant to the Stipulation
16 and/or further order(s) of the Court. No portion of the Settlement Fund shall be
17 disbursed except as provided in the Stipulation, by an order of the Court, or with the
18 written agreement of Lead Counsel and undersigned counsel to Defendants. The
19 Escrow Agent shall not disburse the Settlement Fund except as provided for in the
20 Stipulation, the Preliminary or Final Approval Motions, or by Court order. Upon
21 Final Approval of the Settlement and completion of the claims processing, the
22 Escrow Agent shall distribute the Settlement Fund in accordance with the Court-
23 approved Plan of Allocation without further order of the Court.

24 2.15 After payment of the Settlement Cash to the Escrow Agent, Lead
25 Counsel may establish a "Class Notice and Administration Fund" from the
26

1 Settlement Fund. No further disbursements shall be made from the Settlement Fund,
2 except by an order of the Court, or with written agreement of Lead Counsel and
3 undersigned counsel to Defendants. The Class Notice and Administration Fund may
4 be used by Lead Counsel, without prior approval of the Court, only to pay the Claims
5 Administrator for costs and expenses reasonably and actually incurred in connection
6 with providing Notice to the Settlement Class (the “Class Notice and Administration
7 Expenses”) (including any reimbursement of banks, brokerage houses or other
8 nominees solely for their reasonable out-of-pocket expenses incurred in providing
9 notice to beneficiaries who are Settlement Class Members, which expenses would
10 not have been incurred except for the sending of such notice, subject to further order
11 of the Court with respect to any dispute concerning such compensation), locating
12 Settlement Class Members, assisting with the filing of claims, preparing any tax
13 returns necessary for the Settlement Fund, administering and distributing the
14 Settlement Fund to Authorized Claimants, processing Proof of Claim and Release
15 forms, and paying escrow fees and costs, if any. The Class Notice and
16 Administration Fund also may be invested and earn interest as provided for in ¶¶ 2.3
17 and 2.12 of this Stipulation.

18 2.16 The Released Defendants’ Parties shall not have any responsibility for
19 or incur any liability with respect to: (i) any act, omission, or determination of or by
20 the Escrow Agent, or any designees or agents thereof; (ii) the investment of,
21 administration of, distribution of, or disbursement from the Class Notice and
22 Administration Fund; (iii) the investment of, administration of, distribution of, or
23 disbursement from the Settlement Fund; (iv) the investment of, administration of,
24 distribution of, or disbursement from the Net Settlement Fund; or (v) the payment
25 of Taxes.

1 distribution costs and expenses relating to filing (or failing to file) tax returns) (“Tax
2 Expenses”), shall be paid out of the Settlement Fund exclusively. Further, Taxes and
3 Tax Expenses shall be treated as, and considered to be, a cost of administration of
4 the Settlement Fund and shall be timely paid by the Escrow Agent out of the
5 Settlement Fund without prior order from the Court and the Escrow Agent shall be
6 obligated (notwithstanding anything herein to the contrary) to withhold from
7 distribution to Authorized Claimants any funds necessary to pay such amounts
8 including the establishment of adequate reserves for any Taxes and Tax Expenses
9 (as well as any amounts that may be required to be withheld under Treas. Reg.
10 §1.468B-2(1)(2)). The Parties and their respective counsel agree to cooperate with
11 the Claims Administrator, the Escrow Agent, each other, and their tax attorneys,
12 accountants, or other agents or employees to the extent reasonably necessary to carry
13 out provisions ¶¶ 2.17 to 2.19 of this Stipulation.

14 **D. Effect of Termination of Settlement**

15 2.20 In the event that the Settlement is not approved or the Settlement is
16 terminated, canceled, or fails to become effective for any reason, the Settlement
17 Fund and the Class Notice and Administration Fund and the Net Settlement Fund
18 (in each case, including accrued interest), less administration expenses actually
19 incurred in connection with the Settlement provided for herein, plus accrued interest
20 shall be refunded to Workhorse or the parties Defendants caused to pay the
21 Settlement Cash, pursuant to written instructions from Defendants’ Counsel in
22 accordance with ¶ 7.3 hereof.

23 **3. Class Certification, Preliminary Approval Order and**
24 **Settlement Hearing**

25 3.1 Solely for purposes of the Settlement and for no other purpose,
26 Defendants stipulate and agree to: (i) certification of the Action as a class action

1 pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on
2 behalf of the Class; (ii) certification of Plaintiffs as Class Representatives; and (iii)
3 appointment of KSF as Class Counsel pursuant to Rule 23(g) of the Federal Rules
4 of Civil Procedure. Defendants’ conditional stipulation to a Class is for settlement
5 purposes only and contingent upon consummation of the Settlement and the
6 Judgment becoming Final. If the Settlement does not become effective, Defendants
7 reserve their rights to assert objections and defenses to certification of any class, and
8 Plaintiffs and Lead Counsel agree that they will not offer Defendants’ conditional
9 stipulation to a Class as support for a motion to certify a class, or argue that
10 Defendants are equitably or judicially estopped from contesting certification of a
11 class in the Litigation.

12 3.2 Promptly after execution of the Stipulation, the Parties shall submit the
13 Stipulation together with its Exhibits to the Court and Plaintiffs shall move for entry
14 of the Preliminary Approval Order, substantially in the form of Exhibit A attached
15 hereto, requesting, *inter alia*, the preliminary approval of the Settlement set forth in
16 the Stipulation, and approval for the mailing of the Notice of Pendency and Proposed
17 Settlement of Class Action (the “Notice”) substantially in the form of Exhibit A-1
18 hereto, the Proof of Claim and Release (the “Claim Form”) substantially in the form
19 of Exhibit A-2 hereto, and the Summary Notice (the “Summary Notice”)
20 substantially in the form of Exhibit A-3 hereto, and the Postcard Notice (the
21 “Postcard Notice”) substantially in the form of Exhibit A-4 hereto. The Notice shall
22 include the general terms of the Settlement, the proposed Plan of Allocation, the
23 general terms of the Fee and Expense Application (as defined below), and the date
24 of the Settlement Hearing (as defined below).

25 3.3 Lead Counsel shall request the Court to schedule a hearing after notice
26

1 is given (the “Settlement Hearing”) at which hearing Plaintiffs will seek final Court
2 approval of the Settlement and entry of the Judgment. At the Settlement Hearing,
3 Lead Counsel also will request that the Court approve the proposed Plan of
4 Allocation and the Fee and Expense Application, as provided for in ¶¶ 1.32 and 6.1
5 of this Stipulation.

6 3.4 The form of Preliminary Approval Order submitted to the Court shall
7 specifically include provisions that, among other things, will:

8 (a) Preliminarily approve the Stipulation and the Settlement as fair,
9 just, reasonable and adequate;

10 (b) Preliminarily certify the Class, solely for purposes of the
11 Settlement, and preliminarily find, solely for purposes of the Settlement, that each
12 element for certification of the Class pursuant to Rule 23 of the Federal Rules of
13 Civil Procedure is met;

14 (c) Approve the form of the Notice to be posted on the Settlement
15 website described in subparagraph (h) below and the Postcard Notice for mailing to
16 Members of the Settlement Class for whom no email address is available, which
17 shall direct Settlement Class Members to the Settlement website for Notice and
18 Claim Form;

19 (d) Approve the form of the Claim Form to be posted on the
20 Settlement website described in subparagraph (h) below;

21 (e) Approve the form of Summary Notice for publication and for
22 emailing to Members of the Settlement Class for whom an email address is available,
23 which shall direct Class Members to the Settlement website for Notice and Claim
24 Form;

25 (f) Lead Counsel to mail or cause to be mailed the Postcard Notice
26

1 to those Persons in the Settlement Class who can be identified through reasonable
2 effort, on or before the date specified in the Preliminary Approval Order;

3 (g) Direct nominees who purchased or otherwise acquired
4 Workhorse securities for the benefit of Settlement Class Members during the Class
5 Period to send the Postcard Notice to all such Settlement Class Members within ten
6 (10) days after receipt of the Notice or send a list of the names, email address, and
7 addresses of such beneficiaries to the Claims Administrator within ten (10) days of
8 receipt of the Notice, and authorize the Claims Administrator to reimburse such
9 nominees at no more than the rates provided in the Notice for sending such
10 information;

11 (h) Direct Lead Counsel to cause the Summary Notice to be
12 published twice in nationally distributed, business-focused newswires on or before
13 the date specified in the Preliminary Approval Order, and to place a copy of the
14 Notice, Claim Form, Complaint, Stipulation, and other Settlement-related
15 documents on a Settlement-specific page of a website maintained by the Claims
16 Administrator, on or before the date specified in the Preliminary Approval Order;

17 (i) Provide that Settlement Class Members who wish to participate
18 in the Settlement shall complete Claim Forms pursuant to the instructions contained
19 therein, and provide the Claims Administrator with all requested documentation;

20 (j) Find that the notice given pursuant to subparagraphs (c)-(i) above
21 constitutes the best notice practicable under the circumstances and constitutes valid,
22 due and sufficient notice to all Settlement Class Members, complying fully with the
23 requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of
24 the United States, and any other applicable law;

25 (k) Schedule the Settlement Hearing to be held by the Court to
26

1 consider and determine whether the Settlement should be approved as fair,
2 reasonable and adequate, and whether the Judgment should be entered;

3 (l) Provide that any Settlement Class Member who so desires may
4 exercise the right to exclude themselves from the Settlement Class if they comply
5 with the requirements for so doing as set forth in the Notice;

6 (m) Provide that at or after the Settlement Hearing, the Court shall
7 determine whether the proposed Plan of Allocation should be approved;

8 (n) Provide that at or after the Settlement Hearing, the Court shall
9 determine and enter an Order regarding whether and in what amount attorneys' fees
10 and reimbursement of expenses should be awarded to Lead Counsel out of the
11 Settlement Fund;

12 (o) Provide that pending final determination of whether the
13 Settlement should be approved, neither Plaintiffs nor any Settlement Class Member,
14 whether directly, representatively, or in any other capacity, shall commence or
15 prosecute any action or proceeding in any court or tribunal asserting any of the
16 Released Claims against any of the Released Defendants' Parties; and

17 (p) Provide that any objections to: (i) the Settlement; (ii) entry of the
18 Judgment approving the Settlement; (iii) the proposed Plan of Allocation; or (iv)
19 Lead Counsel's Fee and Expense Application, and any papers submitted in support
20 of said objections, shall be considered by the Court at the Settlement Hearing only
21 if, on or before the date specified in the Notice, Persons making objections shall have
22 filed and served written objections (which shall set forth each objection and the basis
23 therefore) and any papers in support of their position as set forth in the Notice.

24 **4. Releases**

25 4.1 Upon the Effective Date, as defined in ¶ 1.21 of this Stipulation,
26

1 Plaintiffs and each Releasing Plaintiff Party, on behalf of themselves, their
2 respective present and former parent entities, subsidiaries, divisions, and affiliates,
3 the present and former employees, officers, directors, advisors, partners, and agents
4 of each of them, and the predecessors, heirs, executors, administrators, trusts, family
5 members, successors and assigns of each of them, and anyone claiming through or
6 on behalf of any of them, shall be deemed to have, and by operation of the Judgment
7 shall have, fully, finally, and forever released, relinquished, and discharged all
8 Released Claims as against the Released Defendants' Parties, individually or in
9 concert, whether or not such Settlement Class Member executes and delivers a Claim
10 Form or participates in the Settlement Fund.

11 4.2 Upon the Effective Date, all Releasing Plaintiffs' Parties and anyone
12 claiming on behalf of any of them, will be forever barred and enjoined from
13 commencing, instituting, intervening in or participating in, prosecuting, or
14 continuing to prosecute any litigation or other proceeding in any court of law or
15 equity, arbitration tribunal, administrative forum, or other forum of any kind or
16 character (whether brought directly, in a representative capacity, derivatively, or in
17 any other capacity), asserting any of the Released Claims against any of the Released
18 Defendants' Parties.

19 4.3 Upon the Effective Date, with respect to any and all Released Claims,
20 Plaintiffs shall expressly waive, and each Releasing Plaintiff Party be deemed to
21 have waived, and by operation of the Judgment shall have expressly waived, any and
22 all provisions, rights and benefits conferred by California Civil Code § 1542 (to the
23 extent it applies) or any other law of any state or territory of the United States, or
24 principle of common law, which is similar, comparable, or equivalent to California
25 Civil Code § 1542, which provides:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
2 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
4 EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM
5 OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
6 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7 Plaintiffs, for themselves and on behalf of all Releasing Plaintiffs' Parties, expressly
8 acknowledge that they may hereafter discover facts in addition to or different from
9 those that any of them or their counsel now know or believe to be true with respect
10 to the subject matter of the Released Claims or otherwise, but upon the Effective
11 Date, Plaintiffs expressly shall have, and each Releasing Plaintiff Party shall be
12 deemed to have, and by operation of the Judgment shall have, fully, finally, and
13 forever settled and released any and all Released Claims, known or unknown,
14 suspected or unsuspected, contingent or non-contingent, whether or not concealed
15 or hidden, that now exist or heretofore have existed, upon any theory of law or equity
16 now existing or coming into existence in the future, including, but not limited to,
17 conduct that is negligent, reckless, intentional, with or without malice, or a breach
18 of any duty, law, or rule, without regard to the subsequent discovery or existence of
19 such different or additional facts. Plaintiffs acknowledge, and each Releasing
20 Plaintiff Party shall be deemed to have acknowledged, and by operation of the
21 Judgment shall have acknowledged, that the foregoing waiver was separately
22 bargained for and a key element of the Settlement of which this release is a part.

23 4.4 The Proof of Claim and Release to be executed by the Settlement Class
24 Members shall release all Released Claims against the Released Defendants' Parties
25 and shall be substantially in the form contained in Exhibit A-2 attached hereto.

26 4.5 By operation of the Judgment, as of the Effective Date, as defined in ¶
27 1.21 hereof, Defendants and each and every Released Defendants' Party shall be
28

1 deemed to have fully, finally, and forever waived, released, discharged, and
2 dismissed each and every one of the Released Defendants' Claims against each and
3 every one of the Releasing Plaintiffs' Parties and shall forever be barred and enjoined
4 from commencing, instituting, prosecuting, or maintaining any and all of the
5 Released Defendants' Claims against any and all of the Releasing Plaintiffs' Parties.
6 Claims to enforce the terms of the Stipulation are not released.

7 **5. Provision of Notice, Administration of Claims, Final Awards**
8 **and Supervision and Distribution of the Settlement Fund**

9 5.1 The Claims Administrator shall administer and calculate the claims
10 submitted by Settlement Class Members under the supervision of Lead Counsel and
11 pursuant to the Preliminary Approval Order entered by the Court.

12 5.2 Subject to the terms of the Stipulation and any orders of the Court, the
13 Settlement Fund shall be applied as follows:

14 (a) to pay, consistent with ¶ 2.15 hereof, all the costs and expenses
15 reasonably and actually incurred in connection with providing Notice, locating
16 Settlement Class Members, assisting with the filing of claims, administering and
17 distributing the Settlement Fund to Authorized Claimants, processing Claim Forms,
18 and pay escrow fees and costs, if any;

19 (b) to pay any Taxes and Tax Expenses;

20 (c) to pay Lead Counsel's attorneys' fees and expenses, in the
21 amount and manner approved by the Court, and, after the Effective Date, to pay
22 Plaintiffs for their time and expenses, if and to the extent allowed by the Court
23 (collectively, the "Fee and Expense Award");

24 (d) after the Effective Date, to distribute the Net Settlement Fund to
25 Authorized Claimants as allowed by the Stipulation (including ¶ 5.10 below) and the
26 Plan of Allocation and any other applicable order of the Court.

1 deemed to have been submitted when actually received by the Claims Administrator.

2 5.6 Claims Forms that do not meet the submission requirements may be
3 rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator
4 shall communicate with the Claimant in writing to give the Claimant the chance to
5 remedy any curable deficiencies in the Claim Form submitted. The Claims
6 Administrator, under the supervision of Lead Counsel, shall notify, in a timely
7 fashion and in writing, all Claimants whose Claim the Claims Administrator
8 proposed to reject in whole or in part, setting forth the reasons therefore, and shall
9 indicate in such notice that the Claimant whose Claim is to be rejected has the right
10 to a review by the Court if the Claimant so desires and complies with the
11 requirements of ¶ 5.7 below.

12 5.7 If any Claimant whose Claim has been rejected in whole or in part
13 desires to contest such rejection, the Claimant must, within twenty (20) days after
14 the date of mailing of the notice required in ¶ 5.6 above, serve upon the Claims
15 Administrator a notice and statement of reasons indicating the Claimant's grounds
16 for contesting the rejection along with any supporting documentation, and requesting
17 a review thereof by the Court.

18 5.8 The administrative determinations of the Claims Administrator
19 accepting and rejecting Claims shall be presented to the Court, on notice to counsel
20 for Defendants, for approval by the Court. No discovery shall be allowed in
21 connection with the processing of Claims Forms. All Settlement Class Members
22 whose Claims are not approved by the Court shall be barred from participating in
23 distributions from the Net Settlement Fund but otherwise shall be bound by all of
24 the terms of the Stipulation, including the terms of the Final Judgment to be entered
25 in the Action and the releases provided therein, and will be barred and enjoined from
26

1 bringing any action against the Released Defendants' Parties or concerning any or
2 all of the Released Claims.

3 5.9 All Settlement Class Members who fail to timely submit a Claim Form
4 within ninety (90) days after the mailing of the Notice, or such other period as
5 ordered by the Court, shall be forever barred from receiving any payments pursuant
6 to the Stipulation and the Settlement, but will in all other respects be subject to and
7 bound by the provisions of the Stipulation, the releases contained herein, and the
8 Judgment.

9 5.10 The Net Settlement Fund shall be distributed to the Authorized
10 Claimants substantially in accordance with a Plan of Allocation to be described in
11 the Notice and approved by the Court. No distributions will be made to Authorized
12 Claimants who would otherwise receive a distribution with a value of less than
13 \$20.00. If there is any balance remaining in the Net Settlement Fund after six (6)
14 months from the date of distribution of such Net Settlement Fund (whether by reason
15 of tax refunds, uncashed checks or otherwise), such balance shall be reallocated
16 among and distributed to Authorized Claimants in an equitable and economic
17 fashion or used to pay any outstanding amounts due to the Claims Administrator.
18 Should any balance remain, Plaintiffs will propose to the Court for its approval an
19 appropriate 501(c)(3) non-profit organization(s) beneficiary.

20 5.11 No Person shall have any claim against Lead Counsel, the Claims
21 Administrator, or other entity designated by Lead Counsel based on distributions
22 made substantially in accordance with the Stipulation and the Settlement contained
23 herein, the Plan of Allocation, or further order(s) of the Court.

24 5.12 It is understood and agreed by the Parties that any proposed Plan of
25 Allocation of the Net Settlement Fund including, but not limited to, any adjustments
26

1 to an Authorized Claimant’s claim set forth therein, is not a part of the Stipulation
2 and is to be considered by the Court separately from the Court’s consideration of the
3 fairness, reasonableness, and adequacy of the Settlement, and any order or
4 proceeding relating to the Plan of Allocation shall not operate to terminate or cancel
5 the Stipulation or affect or delay the finality of the Judgment or Settlement of the
6 Action (including the releases contained in the Stipulation), or any other orders
7 entered pursuant to the Stipulation.

8 5.13 Defendants will take no position with respect to the Plan of Allocation.
9 The Plan of Allocation is a matter separate and apart from the Settlement and any
10 decision by the Court concerning the Plan of Allocation shall not affect the validity
11 or finality of the Settlement.

12 5.14 The Released Defendants’ Parties shall not have any responsibility for
13 or incur any liability with respect to: any act, omission, or determination of or by the
14 Claims Administrator, or any designees or agents thereof; any act, omission, or
15 determination of or by any other entity designated by Lead Counsel as referenced in
16 this Stipulation; the Plan of Allocation; or the administration of the Plan of
17 Allocation, except that Defendants shall be responsible for: (i) providing required
18 notice under the Class Action Fairness Act of 2005 (“CAFA”), if any, at their own
19 expense, no later than ten (10) business days following the filing of the Stipulation;
20 and (ii) providing transfer agent records for the relevant time period to Lead Counsel
21 within ten (10) business days of preliminary approval of the settlement by the Court.

22 5.15 No Person shall have any claim of any kind against the Released
23 Defendants’ Parties with respect to the matters set forth in ¶¶ 5.1-5.14 hereof.

24 **6. Lead Counsel’s Attorneys’ Fees and Expenses**

25 6.1 Lead Counsel will submit an application for: (a) an award of attorneys’
26

1 fees in an amount not to exceed one-quarter (25%) of the Settlement Amount; (b)
2 reimbursement of litigation expenses, including the fees of any experts, consultants,
3 and investigators incurred in connection with prosecuting the Action; and (c) any
4 interest on such attorneys' fees and expenses accrued at the same rate and for the
5 same periods as earned by the Settlement Fund (until paid), as may be awarded by
6 the Court (the "Fee and Expense Application"). Plaintiffs may also submit an
7 application for compensation for their time and expenses in connection with the
8 prosecution of the Action, pursuant to 15 U.S.C. Section 78u-4(a)(4).

9 6.2 The Attorneys' Fees and Expenses, as awarded by the Court in its sole
10 discretion, shall be paid to Lead Counsel from the Settlement Fund, as ordered,
11 immediately after the Court enters the Judgment and an order awarding such fees
12 and expenses, notwithstanding any objections to or appeals of such order or of the
13 Judgment. In the event that the Effective Date does not occur, or the Judgment is
14 reversed or modified in any way that affects the award of attorneys' fees and
15 expenses, or the Stipulation is terminated for any other reason, then Lead Counsel
16 shall be obligated to refund to the Escrow Account, within thirty (30) business days
17 from receiving notice from Defendants' Counsel or from a court of appropriate
18 jurisdiction, either the full amount of the fees and expenses or an amount consistent
19 with any modification of the Judgment with respect to the Fee and Expense Award,
20 including any accrued interest that had been paid as part of the award. Lead Counsel
21 agrees that their law firm is subject to jurisdiction of the Court for the purpose of
22 enforcing the provisions of this paragraph and are severally liable for repayment of
23 attorneys' fees and expenses awarded by the Court. Any amounts awarded by the
24 Court to Plaintiffs for reimbursement of their time and expenses shall not be paid
25 from the Settlement Fund until after the Effective Date.

1 Stipulation;

2 (d) the Court has entered the Judgment, or a judgment substantially
3 in the form of Exhibit B attached hereto, which, *inter alia*, dismisses the Action with
4 prejudice as to all Defendants and includes the releases set forth in the Stipulation;
5 and

6 (e) the Judgment has become Final.

7 7.2 Upon the occurrence of all the events referenced in ¶ 7.1 of this
8 Stipulation, any and all remaining interest or right of Defendants in or to the
9 Settlement Fund, if any, shall be absolutely and forever extinguished. If all the
10 conditions specified in ¶ 7.1 of this Stipulation are not met, then the Stipulation shall
11 be canceled and terminated subject to ¶ 7.4 of this Stipulation unless Lead Counsel
12 and Defendants' Counsel mutually agree in writing to proceed with the Settlement.

13 7.3 Unless otherwise ordered by the Court, in the event that the Effective
14 Date does not occur or the Stipulation shall terminate, or be canceled, or shall not
15 become effective for any reason (including, without limitation, in the event that the
16 Settlement is not approved by the Court or the Judgment is reversed or vacated
17 following any appeal taken therefrom), within ten (10) business days after written
18 notification of such event is received by Lead Counsel, the Settlement Fund
19 (including accrued interest), including the Settlement Amount, plus the Class Notice
20 and Administration Fund (including accrued interest), and the Net Settlement Fund,
21 and all payments disbursed, including all expenses, costs, and any Fee and Expense
22 Award and any Plaintiffs' time and expense allocations – excluding administration
23 costs which have already been incurred – shall be refunded by the Escrow Agent to
24 Defendants or to other parties at the Defendants' direction.

25 7.4 In the event that the Settlement is not approved by the Court or is
26

1 terminated or fails to become effective in accordance with its terms, the Parties shall
2 be restored to their respective positions in the Action as of the moment immediately
3 before the Term Sheet was executed on October 26, 2022. In such event, the terms
4 and provisions of the Stipulation and any document executed pursuant to or in
5 furtherance of the Stipulation or the Settlement, with the exception of ¶¶ 2.14, 7.3 to
6 7.5, and 8.4 shall have no further force and effect with respect to the Parties and shall
7 not be used in this Action or in any other proceeding for any purpose, and any order
8 entered by the Court in accordance with the terms of the Stipulation shall be treated
9 as vacated, *nunc pro tunc*.

10 7.5 If the Effective Date does not occur, or if the Stipulation is terminated
11 pursuant to its terms, neither Plaintiffs nor Lead Counsel shall have any obligation
12 to repay any Class Notice and Administration Expenses. In addition, any Class
13 Notice and Administration Expenses already incurred and properly chargeable to the
14 Class Notice and Administration Fund pursuant to ¶ 2.14 of this Stipulation at the
15 time of such termination or cancellation, but which have not been paid, shall be paid
16 by the Escrow Agent in accordance with the terms of the Stipulation prior to the
17 balance being refunded in accordance with ¶¶ 2.20 and 7.3 of this Stipulation.

18 7.6 Simultaneously herewith, the Parties, by and through their respective
19 counsel, are executing a Supplemental Agreement, which shall remain confidential
20 unless otherwise ordered by the Court, which gives Defendants the right, but not the
21 obligation, to terminate the Settlement in the event that a certain portion of the
22 Settlement Class delivers timely and valid requests for exclusion from the Settlement
23 Class (the “Supplemental Agreement”).

24 **8. Miscellaneous Provisions**

25 8.1 The Parties acknowledge that it is their intent to consummate this
26

1 Settlement, agree to cooperate to the extent reasonably necessary to effectuate and
2 implement all terms and conditions of the Stipulation, and will exercise their
3 reasonable best efforts to accomplish the terms and conditions of the Stipulation.

4 8.2 The Parties intend the Settlement to be the full, final, and complete
5 resolution of all claims asserted or that could have been asserted by the Parties with
6 respect to the Action, Releasing Plaintiffs' Claims, and Released Defendants'
7 Claims. The Settlement compromises claims which are contested and shall not be
8 deemed an admission by any Party as to the merits of any claim or defense. Pursuant
9 to 15 U.S.C. Section 78u-4(c)(1), the Judgment will contain a finding that, at all
10 times during the course of the Action, the Parties and their respective counsel
11 complied with the requirements of Federal Rule of Civil Procedure 11 in connection
12 with the maintenance, prosecution, defense, and settlement of the Action and shall
13 not make any application for sanctions, pursuant to Rule 11 or any other court rule
14 or statute, with respect to any claim or defense in this Action. The Parties agree that
15 the Settlement Amount and the other terms of the Settlement were negotiated at
16 arm's length and in good faith by the Parties and reflect a settlement that was reached
17 voluntarily based upon adequate information and after consultation with competent
18 legal counsel. The Parties reserve their right to rebut, in a manner that such party
19 determines to be appropriate, any contention made in any public forum regarding
20 the Action, including that the Action was brought or defended in bad faith or without
21 a reasonable basis.

22 8.3 Neither the Term Sheet, the Stipulation, nor the Settlement, nor any of
23 their terms or provisions, nor any act performed or document executed pursuant to
24 or in furtherance of them, nor any of the negotiations or proceedings connected with
25 them: (a) is or may be deemed to be or may be used as an admission of, or evidence
26

1 of, the validity of any Released Claim, or of any wrongdoing or liability of the
2 Released Defendants' Parties, or; (b) is or may be deemed to be or may be used as
3 an admission of, or evidence of, any fault or omission of any of the Released
4 Defendants' Parties in any civil, criminal, administrative, or other proceeding before
5 any court, administrative agency, arbitration tribunal, or other body. Any of the
6 Released Defendants' Parties may file the Stipulation and/or the Judgment in any
7 action or other proceeding that may be brought against them in order to support a
8 defense, argument, or counterclaim based on principles of *res judicata*, collateral
9 estoppel, release, good faith settlement, judgment bar or reduction, or any other
10 theory of claim preclusion or similar defense, argument, or counterclaim. Nothing
11 contained herein restricts, curtails, or limits the advancement or indemnification
12 obligations of Workhorse.

13 8.4 All agreements and orders entered during the course of the Action
14 relating to the confidentiality of information shall survive the Stipulation, pursuant
15 to their terms.

16 8.5 All of the Exhibits to the Stipulation are material and integral parts
17 hereof and are fully incorporated herein by reference. In the event there exists a
18 conflict or inconsistency between the terms of the Stipulation, on the one hand, and
19 any Exhibit on the other, the terms of the Stipulation shall govern.

20 8.6 The Stipulation may be amended or modified only by a written
21 instrument signed by or on behalf of all Parties or their respective successors-in-
22 interest.

23 8.7 The Stipulation and the executed or so ordered versions of those
24 ancillary documents which are attached hereto as Exhibits constitute the entire
25 agreement among the Parties, superseding the Term Sheet, and no representations,
26

1 warranties or inducements have been made to any party concerning the Stipulation
2 or its Exhibits other than the representations, warranties, and covenants contained
3 and memorialized in such documents. Except as otherwise provided herein,
4 Plaintiffs shall not be responsible for any costs borne by Defendants or Defendants’
5 Counsel, and Defendants shall not be responsible for any costs borne by Plaintiffs
6 or Lead Counsel, except that Defendants will be responsible for any costs incurred
7 in the transfer of the Settlement Stock, as provided for in ¶ 2.4 hereof.

8 8.8 Lead Counsel, on behalf of the Settlement Class, are expressly
9 authorized by Plaintiffs to take all appropriate actions required or permitted to be
10 taken by the Settlement Class pursuant to the Stipulation to effectuate its terms and
11 are also expressly authorized to enter into any modifications or amendments to the
12 Stipulation on behalf of the Settlement Class which Lead Counsel deem appropriate.

13 8.9 Each Person executing the Stipulation or any of its Exhibits on behalf
14 of any party hereto hereby warrants that such Person has the full authority to do so.

15 8.10 The Stipulation may be executed by electronic signature, in one or more
16 counterparts. All executed counterparts shall be deemed to be one instrument. A
17 complete set of original executed counterparts shall be filed with the Court.

18 8.11 The Stipulation shall be binding upon, and inure to the benefit of, the
19 successors and assigns of the Parties.

20 8.12 The Court shall retain jurisdiction with respect to implementation and
21 enforcement of the terms of the Stipulation, and all Parties submit to the jurisdiction
22 of the Court for purposes of implementing and enforcing the Settlement. The Parties
23 agree that any action based on the Stipulation or to enforce any of its terms shall be
24 brought in this Court.

25 8.13 Plaintiffs and Lead Counsel represent and warrant that none of
26

1 Plaintiffs' claims or causes of action in the Action have been assigned, encumbered,
2 or in any manner transferred in whole or in part.

3 8.14 All terms of the Stipulation and the executed or so ordered versions of
4 those ancillary documents which are attached hereto as Exhibits shall be governed
5 by and interpreted according to the substantive laws of the State of California,
6 without giving regard or effect to its choice-of-law rules, except to the extent that
7 federal law requires the application of federal law.

8 8.15 The headings herein are used for the purpose of convenience only and
9 are not meant to have legal effect.

10 8.16 The waiver by one Party of any breach of the Stipulation by any other
11 Party shall not be deemed a waiver of any other prior or subsequent breach of the
12 Stipulation. Unless otherwise stated herein, any breach of any provision of the
13 Stipulation by any Party hereto shall not constitute grounds for rescission of the
14 Stipulation but shall constitute grounds only for a claim for specific performance for
15 breach of the Stipulation.

16

17

18

19

20

21

22

23

24

25

26

27

28

1 IN WITNESS THEREOF, the Parties hereto have caused the Stipulation to be
2 executed, by their duly authorized attorneys dated this 13th day of January, 2023.

3
4 **KAHN SWICK & FOTI, LLC**

Kim E Miller

5
6 Kim E. Miller
7 250 Park Avenue, 7th Floor
8 New York, NY 10177
9 Telephone: (212) 696-3730
10 Facsimile: (504) 455-1498
11 Email: kim.miller@ksfcounsel.com

12 *Lead Counsel for Lead Plaintiff*
13 *Timothy M. Weis, Additional Plaintiff*
14 *Angelo Federico, and the Settlement*
15 *Class*

**SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP**

John N. Stigi III

16 John N. Stigi III
17 1901 Avenue for the Stars, Suite 1600
18 Los Angeles, California 90067
19 Tel.: (310) 228-3700
20 Fax: (310) 228-3701
21 Email: jstigi@sheppardmullin.com

22 *Counsel for Defendants Workhorse*
23 *Group Inc. and Gregory Ackerson*

**KATTEN MUEHLEN ROSENMAN
LLP**

24
25 Richard H. Zelichov
26 2029 Century Park East, Suite 2600
27 Los Angeles, CA 90067
28 Tel.: (310) 788-4680
Email: richard.zelichov@katten.com

Counsel for Defendants Duane
Hughes, Steve Schrader, and Robert
Willison