

SETTLEMENT AGREEMENT

I. Introduction.

This Settlement Agreement (“Agreement”) is hereby entered on March 30, 2022, by and between Silverstreak, Inc. (“Silverstreak”) and Tina Marie Benson (collectively, “Defendants”) and the named plaintiffs, Jay Morgan and Daniel Mydland (collectively, “Plaintiffs”), who are each acting both in their respective individual capacities and their capacities as class representatives for the Class defined herein and in the action entitled *Jay Morgan and Daniel Mydland v. SilverStreak, Inc., et al.*, King County Superior Court Civil Case No. 19-2-08785-4 KNT (the “Case”).

II. Litigation and Due Diligence.

The Parties have conducted substantial discovery, investigated the facts and the law, and extensively litigated the Case. As part of their prosecution and defense of the Case, the Parties and their counsel have (a) interviewed and deposed witnesses; (b) collected, produced, and analyzed extensive electronic time records, payroll data, and other information concerning the composition of the Class; (c) evaluated the merits of Plaintiffs’ claims and Defendants’ defenses; (d) filed and responded to various motions, including motions for class certification, summary judgment, and discretionary review; (e) conducted a mediation and extensive follow up mediated settlement negotiations lasting months; and (f) amply considered and analyzed their respective claims and defenses.

III. Settlement Negotiations.

The Parties engaged in mediated settlement negotiations between July 2021 and the date of this Agreement. The Parties used an experienced mediator, Theresa Wakeen, throughout this period leading up to the Agreement. All settlement negotiations have been conducted in good faith and at arm’s length. Through their litigation, investigations, and communications, the Parties have reached a class action settlement of this Case that they believe to be fair, adequate, and reasonable, and that Plaintiffs believe is in the best interest of the Class. This Agreement memorializes the terms of the final Settlement agreed to by the Parties as the result of the negotiations.

IV. Defendants’ Denials of Wrongdoing and Non-admission of Allegations.

Defendants have denied and continue to deny each of the claims and contentions alleged by Plaintiffs on their own behalf and on behalf of any members of the class alleged by Plaintiffs in the Case. Defendants have asserted, and continue to assert, defenses and objections to the maintenance of this Case as a class action. Furthermore, Defendants have expressly denied, and continue to deny, any wrongdoing or legal liability arising out of any of the facts or conduct alleged in this Case, including that any class members are entitled to wages or other compensation that Defendants did not pay. Neither the Settlement, this Agreement, nor any document referred to or contemplated herein—or any action taken to carry out this Agreement—is, may be construed as, or may be used as an admission, concession or indication by or against Defendants of any fault, wrongdoing, or liability whatsoever. If the Parties had not reached the Settlement, Defendants would have continued to vigorously defend against Plaintiffs’ claims, including appealing

decisions made by the King County Superior Court. Defendants agree to this Settlement solely to avoid the burden and expense of further litigation.

1. Definitions.

a. **“Effective Date”** means the date when both (1) the Settlement has been finally approved by the Superior Court, and (2) the Superior Court’s order approving the Settlement and dismissing this Case with prejudice (the “Final Judgment”) becomes final. For purposes of this subsection, the Superior Court’s Final Judgment “becomes final” upon the later of either (a) the expiration of the time for filing an appeal from the Final Judgment or for otherwise seeking appellate review; or (b) if an appeal is timely filed or other appellate review is sought, the date the Mandate or other final affirmance is issued by the appellate court affirming the Final Judgment.

b. **“Settlement”** means the settlement reached by the Parties through the negotiation process described in Section III above.

c. **“Settlement Administrator”** means Simplurus, Inc, subject to the Superior Court’s approval.

d. **“Settlement Class Period”** means the period from March 29, 2016, through the date of this Agreement.

e. **“Class”** or **“Class Members”** means all current and former employees of Silverstreak, Inc., who at any time from March 29, 2016 through March 30, 2022 worked as drivers for the company while based or residing in the State of Washington.

f. **“Settlement Class”** or **“Settlement Class Members”** means all Class members, exclusive of any person who timely opts out of the Settlement pursuant to the procedures set forth below. Any person not identified by Defendants but who falls within the definition of Class Member and any person who timely opts out from the Settlement in conformity with this Agreement shall not be bound by the terms of this Agreement or any Final Judgment entered by the Superior Court and shall retain the right to pursue any alleged individual claims against Defendants in a separate action.

g. The **“Notice of Settlement”** means the form attached hereto as **Exhibit A**.

h. The **“Initial Mailing Date”** is the date the Settlement Administrator first mails the Notice of Settlement approved by the Superior Court to all Class Members.

i. The **“Notice Deadline”** is sixty (60) days after the Initial Mailing Date.

j. **“Class Counsel”** means Rekhi & Wolk, P.S. and Terrell Marshall Law Group PLLC, subject to the Superior Court’s approval.

k. **“Class Fund”** means the aggregate gross amount to be paid to the Settlement Class as Settlement Awards pursuant to this Settlement, subject to approval by the Superior Court. The Class Fund shall be calculated as the Settlement Amount minus any court-approved Service Award, Settlement Administration Expenses Award, and Attorneys’ Fees and

Costs Award. The Parties estimate the Class Fund will be Nine Hundred and Sixty-Nine Thousand One Hundred Twenty Six dollars and Forty Seven Cents (\$969,126.47).

l. **“Settlement Awards”** means the amounts the Plaintiffs propose be paid to members of the Settlement Class pursuant to this Agreement.

m. **“Service Award”** means the amount the Parties propose be paid to each Named Plaintiff in recognition of his efforts in prosecuting the Case. Subject to approval by the Superior Court, the amount paid to each Named Plaintiff for his Service Award shall be Five Thousand Dollars (\$5,000.00).

n. **“Settlement Administration Expenses Award”** means the amount the Parties propose be paid to the Settlement Administrator for the processing of the Settlement. Subject to approval by the Superior Court, the amount paid to the Settlement Administrator for the processing of the Settlement shall not exceed five thousand five hundred Dollars (\$5,500.00).

o. **“Attorneys’ Fees”** means the amount the Parties propose be paid to Class Counsel as attorneys’ fees in connection with their prosecution and settlement of the Case. Subject to approval by the Superior Court, the amount to be paid to Class Counsel as attorneys’ fees shall not exceed 30% of the Settlement Amount, or Four Hundred and Fifty Thousand Dollars (\$450,000.00).

p. **“Settlement Amount”** means the total amount Defendants are required to pay pursuant to this Settlement, which is the sum of One Million Five Hundred Thousand Dollars (\$1,500,000). The Settlement Amount will include all payments made to the Settlement Class, all service payments, all settlement administration costs (including preparation of all IRS forms), and all of Plaintiffs’ attorney’s fees and costs.

2. **Release.** As of the Effective Date, the Settlement and this Agreement will constitute a full and final settlement, release, and waiver by the Named Plaintiffs and all members of the Settlement Class of all claims accrued in the Settlement Class Period, whether known or unknown, that were brought or could have been brought by Named Plaintiffs on behalf of the Class against Defendants based on any facts alleged in the Complaint, including but not limited to with respect to a failure to pay all hours worked at the proper wage rate (including prevailing wages), failure to pay overtime wages, failure to provide meal and rest breaks, making unlawful deductions from wages, and any claims for penalties, enhancements, and/or attorneys’ fees and costs related to these claims.

3. **Payments by Defendants.**

Subject to approval of the Settlement by the Superior Court, Defendants agree to pay the entire settlement amount to Class Counsel’s Trust Account on the following schedule: (a) \$350,000 within 20 days of the Court’s preliminary approval of the Settlement; (b) \$350,000 by July 1, 2022, (c) \$350,000 by September 1, 2022, and (d) \$450,000 by December 1, 2022. Defendants will not be responsible for making any additional payments, whether to the Settlement Class Members, to the Named Plaintiffs, to Class Counsel, to the Settlement Administrator, or otherwise. By Defendants making the payments set forth above, Defendants will fully discharge their financial obligations under this Agreement and shall have no further financial obligations under this

Agreement, whether to the Settlement Class Members, to the Named Plaintiffs, to Class Counsel, to the Settlement Administrator, or otherwise.

4. Calculation of Settlement Awards.

a. Subject to approval by the Superior Court, the calculations of gross (pre-tax) Settlement Awards for Settlement Class Members will be made by Class Counsel based on records that have been or will be submitted to Class Counsel by Defendants, which records Defendants confirm are accurate. Defendants have provided or will provide data to Plaintiffs' counsel reasonably necessary for the calculation of the Settlement Awards in the form of an Excel spreadsheet (or spreadsheets), which shall contain data or information sufficient to show the time Class Member worked during the Settlement Class Period and their rates of pay. The data will contain the same content and in substantially the same form as previously provide by Defense counsel, or as may be agreed by the parties. To the extent not already produced to Class Counsel, Defendants shall provide the Excel spreadsheet(s) containing the foregoing data to Class Counsel within sixty (60) days after the execution of this agreement. Any data provided to Class Counsel or the Settlement Administrator pursuant to this Agreement shall be used solely for the purposes of administering this Settlement and not for any other purpose. Class Counsel and the Settlement Administrator shall maintain any data provided pursuant to this Agreement as private and confidential and shall not use or disclose such data to any other persons or entities except as required by this Settlement, law or Court order.

b. Class Counsel shall be responsible for calculating the gross amounts of the Settlement Awards for Settlement Class Members in conformity with this Agreement. Settlement Class Members will be paid a pro rata share of the Class Fund based on Class Counsel's damages calculations, which take into account the data related to work performed, the hourly rates and the number of hours worked for each Settlement Class Member as compared with the data related to work performed, the hourly rates and number of hours worked all Settlement Class Members. Class Counsel may weight damages based on Class Counsel's opinion of the probability of success of any particular claim.

Class Counsel shall provide the Settlement Administrator with an electronic report setting forth the results of their calculation of the gross Settlement Awards for Settlement Class Members.

c. **Allocation of Settlement Awards.** The entirety of the Settlement Award will be treated as non-wages (penalties, enhancements, and prejudgment interest) on which there will be no tax withholding and for which IRS Forms 1099-MISC (marked "Other Income") shall be issued to the taxing authorities and Eligible Settlement Class Members by the Settlement Administrator.

5. Attorneys' Fees and Costs Award.

As part of seeking the Superior Court's final approval of this Settlement, Class Counsel will apply to the Superior Court for an Attorneys' Fees of no more than Four Hundred and Fifty Thousand Dollars (\$450,000.00). In addition to Attorney Fees, Class Counsel will seek approval

of costs Class Counsel incurred in litigating this matter, not to exceed actual costs incurred, which is currently estimated to be Sixty-Five Thousand Three Hundred and Seventy three dollars and fifty three cents. (\$65,373.53) These attorneys' fees and costs, in the amount approved by the Superior Court, will be paid out of the Settlement Amount.

6. Service Awards.

Subject to approval by the Superior Court, in addition to a Settlement Award computed as described above, each of the Named Plaintiffs shall receive a separate Service Award, which will be treated as non-wages, on which there will be no payroll tax withholdings and for which an IRS Form 1099 (marked "Other Income") shall be issued to the taxing authorities and Named Plaintiffs by the Settlement Administrator. Subject to approval by the Superior Court, each Service Award shall be in the amount of Five Thousand Dollars (\$5,000.00). These Service Awards, in the amount approved by the Superior Court, will be paid out of the Settlement Amount.

7. Settlement Administration.

a. The Settlement Administrator shall be responsible for mailing and emailing the Notice of Settlement to the Class, tracing undeliverable mailings, recording and tracking responses to the mailings to the Class, tracking and responding to any inquiries made by any member of the Class, printing, issuing and mailing the checks for Settlement Awards, preparing, mailing, and filing Forms 1099 to the parties (issued from the Settlement Administrator or Trust Account as the payer), the Class, and the relevant taxing authority, as well as any other related tasks mutually agreed to by the Parties.

b. The Settlement Administrator will perform the foregoing duties based on data provided by Class Counsel. In addition to the data described in Section IV.4, above, Defendants shall, within thirty (30) days after this Agreement is preliminarily approved by the Superior Court, provide the Class Counsel with an Excel spreadsheet containing the following information for each member of the Settlement Class: name, last known address, last known telephone, last known non-work email address (if any), and social security number. Other data will be provided, upon request from Settlement Administrator or Class Counsel, as reasonably necessary to complete administer the settlement under this Agreement. All such data shall be treated as private and confidential, and not be used or disclosed to any persons, or entities except as required by this Settlement, law or Court order. The Settlement Administrator may share data with Class Counsel to facility its duties of administrating the settlement.

c. The Settlement Administrator shall also have the responsibility to track any Class Member's exclusion request. Each Class Member who does not submit a valid and timely request for exclusion will automatically be a Settlement Class Member and eligible to receive a Settlement Award. Within five (5) days after the Notice Deadline, the Settlement Administrator shall provide Defendants and Class Counsel with (1) an electronic report setting forth the names and identities of all Class Members who submitted a valid and timely exclusion request in conformity with this Agreement ("Exclusion Letter"); (2) an electronic report setting forth the names and identities of all Class Members who did not submit an Exclusion Letter; (3) copies of all Exclusion Letters returned or received; and (4) copies of all objections returned or received. Defendants and Class Counsel shall be entitled to review the eligibility determinations made by the Settlement Administrator for compliance with the terms of this Agreement. The Settlement

Administrator shall retain the originals of all Exclusion Letters returned, along with their envelopes, and objections received. Defendants and Class Counsel shall have seven (7) days after receiving the electronic report and related documentation from the Settlement Administrator to challenge any Exclusion Letter and/or eligibility determination in writing directed to the Settlement Administrator. Within five (5) days after submitting such concerns to the Settlement Administrator, the Parties shall meet and confer in an attempt to resolve any disputes relating to the subject Exclusion Letters and/or eligibility determinations. In the event the Parties are unable to reach resolution on any disputes relating to the subject Exclusion Letters and/or eligibility determinations, the Parties shall submit their respective positions in writing to the Superior Court, which shall make the final decision regarding the subject Exclusion Letters and/or eligibility determinations. Thereafter, the Settlement Administrator shall provide the final results of its eligibility determinations to Defendants and Class Counsel, which results will include the names and identities of all Settlement Class Members and the identity of all individuals who opted out of the Settlement.

d. As part of seeking the Superior Court's final approval of this Settlement, Class Counsel will apply to the Superior Court for a Settlement Administration Expenses Award of no more than Four Thousand Five Hundred Thousand Dollars (\$4,500.00) for the initial distribution and an additional one Thousand Dollars (\$1,000) for a second distribution. The costs, fees and expenses incurred by the Settlement Administrator in administering this Settlement shall be paid from the Settlement Amount approved by the Court.

8. Notice/Approval of Settlement Class Certification and Settlement Agreement.

As part of this Settlement, the Parties agree to the following procedures for obtaining preliminary Superior Court approval of the Settlement, notifying the members of the Class, obtaining final Superior Court approval of the Settlement, and implementing payment of Settlement Awards to Settlement Class Members:

a. Class Counsel shall file a motion with the Superior Court to obtain preliminary approval of the Settlement in conformity with this Agreement and authorizing the issuance of the Notice of Settlement to members of the Class. Class Counsel shall provide Defendants with the opportunity to review the proposed motion for preliminary approval at least five (5) business days in advance of filing. During that time, Defendants may propose edits and/or modifications to the motion and the parties agree in good faith to resolve differences regarding the form and content of the motion. Notwithstanding the above, Class Counsel retains complete and sole discretion on the content of its motion to obtain preliminary approval.

b. For purposes of this Settlement, Class Counsel will ask the Superior Court to enter an order preliminarily approving the Settlement and this Agreement, approving Notice of Settlement to the Class, and setting a date for a Fairness Hearing to determine whether the Court will grant final approval of the Settlement and this Agreement (the "Preliminary Approval Order").

c. Subject to the Superior Court's approval, Notice of the Settlement shall be provided using the following procedures:

(1) Within thirty (30) days of the date the Superior Court grants preliminary approval to the Settlement and issues its Preliminary Approval Order, the Settlement Administrator will send the Notice of Settlement to all Class Members by mail.

(2) The Notice of Settlement shall provide that Class Members who do not opt out (i.e., who become Settlement Class Members) and who wish to object to the Settlement must submit to the Settlement Administrator a written statement objecting to the Settlement. Such written statement must be postmarked or delivered to the Settlement Administrator on or before the Notice Deadline.

(3) The Notice of Settlement shall also provide that Class Members who wish to exclude themselves (i.e., opt out) from the Settlement must mail a letter to the Settlement Administrator requesting exclusion from the Settlement on or before the Notice Deadline. Class Members who fail to submit a valid and timely Exclusion Letter on or before the Notice Deadline shall be deemed Settlement Class Members and shall be bound by all terms of the Settlement and any Final Judgment entered in this Case if the Settlement is approved by the Superior Court, regardless of whether they have objected to the Settlement.

(4) The Notice of Settlement shall also advise Class Members that they need do nothing (other than not affirmatively opt out) to receive a Settlement Award.

d. The Parties agree that neither they nor their counsel will solicit or otherwise encourage any of the Class Members to opt out of or object to the Settlement or to appeal from the Superior Court's Final Judgment approving the Settlement.

e. Should any Notice of Settlement be returned as undeliverable without a forwarding address, the Settlement Administrator will perform a reasonable "skiptrace" search using the National Change of Address database to obtain an updated address and, if located, shall make a second attempt at mailing the Notice of Settlement. If such Notice of Settlement is again returned as undeliverable, no further attempts at delivery of the Notice of Settlement are required. Notwithstanding the foregoing, the Settlement Administrator or Class Counsel may mail or email a Notice of Settlement to a Class Member at an address or email address obtained by other means if the Notice of Settlement is returned as undeliverable or upon the Class Member's request for the same. Defendants shall provide the Settlement Administrator or Class Counsel with email information for such Class Members upon request, to the extent such information is reasonably available.

f. Within the later of thirty (30) days after the Notice Deadline, or seven days following resolution of challenge as set forth in Section IV.7(c) *supra*, Class Counsel must file with the Superior Court a supplemental memorandum in support of final approval of the Settlement to inform the Court of any Class Members who have opted out of the settlement, to provide the Court with copies of all written objections received from any Class member, and to respond to any objections to the settlement.

g. Subject to the Superior Court's availability and direction a Fairness Hearing shall be held for the Superior Court to determine whether to grant final approval of the Settlement, including Class Counsel's Attorneys' Fees and Costs Award, the Settlement Administration Expenses Award, and the Service Award to each of the Named Plaintiffs. If the Superior Court

finally approves the Settlement, the Parties will promptly and jointly ask the Superior Court to enter a Final Judgment dismissing the Case with prejudice and without an award of attorneys' fees, expenses or costs to any Party except as provided herein.

h. After entry of the Final Judgment, and subject to Rule 7.2 of the Washington Rules of Appellate Procedure, the Superior Court shall have continuing jurisdiction solely for the purposes of enforcement of the Settlement Agreement and addressing (a) settlement administration matters, and (b) such post-Final Judgment matters as may be appropriate under Court rules.

i. Within twenty (20) days after the receipt of all funds, the Settlement Administrator will issue and mail to Class Counsel checks for the monies reflected in the court-approved Attorneys' Fees and Costs Award and Service Awards. The Settlement Administrator will also issue a check to itself for the amount of the court-approved Settlement Administration Expenses Award.

j. Within twenty (20) days after the receipt of all funds, the Settlement Administrator shall mail the Settlement Award checks to the Settlement Class Members, along with any attendant tax forms.

k. No later than one hundred sixty (160) days after the Settlement Administrator mails the Settlement Award checks, Class Counsel shall file a Satisfaction of Judgment confirming that the payments required by the Final Judgment have been made and that no further actions are needed to comply with the Final Judgment. This shall terminate the Court's jurisdiction over the Case.

l. Should any Settlement Award checks be returned as undeliverable without a forwarding address, the Settlement Administrator will perform a reasonable "skiptrace" search using the National Change of Address database to obtain an updated address and, if located, shall make a second attempt at mailing the Settlement Award Check. The Settlement Administrator shall mail any Settlement Class Member his or her Settlement Award check if he or she contacts the Settlement Administrator and provides a correct mailing address within ninety (90) days after the initial distribution of the Settlement Award checks. If contacted by a Settlement Class member, Defendants shall instruct the member to contact the Settlement Administrator or Class Counsel. No later than one hundred twenty (120) days after the initial distribution of the Settlement Award checks, Settlement Administrator shall provide Class Counsel with an accounting indicating which funds have been distributed to Settlement Class Members and which, if any, checks to Settlement Class Members have not been negotiated by that time. In the event any funds have not been distributed by one hundred twenty (120) days after the initial distribution of the Settlement Award checks, or any checks mailed to Settlement Class Members have not been negotiated within one hundred eighty (180) days after distribution of the Settlement Award checks, such funds shall be considered Residual Funds.

m. Should the Residual Funds after the initial distribution be greater than \$50,000, at the sole discretion of Class Counsel, a second distribution of the funds may be made to those Settlement Class Members who cashed their Settlement Award Check(s) received in the initial distribution. Any checks mailed out as part of the second distribution that have not been

negotiated within one hundred eighty (180) days after second distribution of the Settlement Award checks shall be considered Residual Funds.

n. The Settlement Administrator shall issue a check for those Residual Funds to the Legal Foundation of Washington and shall deliver that check to Class Counsel, for delivery to the Legal Foundation of Washington. No portion of the Settlement Amount will revert to Defendants.

o. If the Superior Court does not enter an order preliminarily or finally approving the Settlement, or if the Settlement does not become final for any other reason, this Agreement shall be null and void. In such case, the parties shall proceed in all respects as if this Agreement had not been executed. In the event an appeal is filed from the Superior Court's Final Judgment, or from any other appellate review that is sought prior to the Effective Date, funding and administration of the Settlement shall be stayed pending final resolution of the appeal or any other form of appellate review.

9. No Effect on Employee Benefits.

This Settlement, and any payments made under the Settlement to Settlement Class Members, shall have no effect on the eligibility for and/or calculation of employee benefits of any Settlement Class Members.

10. Miscellaneous Provisions.

a. The Parties agree to stay all further proceedings in this Case, except such proceedings as are necessary to implement and complete this Settlement and/or to implement this Agreement, pending the Fairness Hearing to be conducted by the Superior Court and the Effective Date of the Settlement.

b. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

c. For any persons who fit the definition of Class Members, as defined above, but were not identified by Defendants as Class Members, the parties agree that the Statute of Limitations as to any claim released by the Settlement Class is tolled for the period of time this matter was pending. This Agreement constitutes the entire Agreement among these Parties. No representations, warranties or inducements have been made to any Party concerning this Agreement, other than the representations, warranties and covenants contained and memorialized in this Agreement and the documents it requires (such as the Notice of Settlement).

d. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to enter into this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement this Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Settlement or this Agreement, or on any supplemental

provisions that may become necessary to effectuate the terms of this Settlement or this Agreement, then either Party may seek the Superior Court's assistance to resolve such disagreement.

e. This Agreement shall be binding upon, and shall inure to the benefit of, the successors of the Parties hereto, as previously defined.

f. All terms of this Agreement shall be governed by and interpreted according to the laws of the State of Washington.

g. Named Plaintiffs and Defendants believe that this is a fair, reasonable and adequate settlement, and have arrived at this Settlement through arm's-length negotiations, taking into account all relevant factors, present and potential.

IT IS SO AGREED.

**COUNSEL FOR NAMED
PLAINTIFFS AND CLASS
COUNSEL**

REKHI & WOLK, P.C.



Hardeep S. Rekhi
Gregory Wolk
Counsel for Named Plaintiffs and Class
Counsel

Dated: 03 / 30 / 2022

**COUNSEL FOR DEFENDANTS
SILVERSTREAK INC., TINA
MARIE BENSON**

CALFO EAKES, LLP

Patty Eakes
Andrew DeCarlow
Counsel for Defendants Silverstreak, Inc., a
Washington Corporation, Tina Marie Benson

Dated: _____

**TERRELL MARSHALL LAW GROUP
PLLC**



Toby Marshall
Erika Nusser
Counsel for Named Plaintiffs and Class
Counsel

Dated: 03 / 30 / 2022

**SILVERSTREAK, INC., A WASHINGTON
CORPORATION**

_____, Owner/Manager

Dated: _____

**NAMED PLAINTIFF AND CLASS
REPRESENTATIVE**



Jay Morgan, individually and on behalf of the
Settlement Class

Dated: 03 / 30 / 2022

**NAMED PLAINTIFF AND CLASS
REPRESENTATIVE**



Daniel Mydland individually and on behalf of
the Settlement Class

Dated: 03 / 30 / 2022

INDIVIDUAL DEFENDANT

Tina Marie Benson, individually and in her
capacity as an agent, owner, and/or manager of
Silverstreak, Inc., a Washington Corporation.

Dated: _____

provisions that may become necessary to effectuate the terms of this Settlement or this Agreement, then either Party may seek the Superior Court's assistance to resolve such disagreement.

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IT IS SO AGREED.

**COUNSEL FOR NAMED
PLAINTIFFS AND CLASS
COUNSEL**

REKHI & WOLK, P.C.

Hardeep S. Rekhi
Gregory Wolk
Counsel for Named Plaintiffs and Class
Counsel

Dated: _____

**TERRELL MARSHALL LAW GROUP
PLLC**

Toby Marshall
Erika Nusser
Counsel for Named Plaintiffs and Class
Counsel

**NAMED PLAINTIFF AND CLASS
REPRESENTATIVE**

**COUNSEL FOR DEFENDANTS
SILVERSTREAK INC., TINA
MARIE BENSON**

CALFO EAKES, LLP

Andrew DeCarlow
Patty Eakes
Andrew DeCarlow
Counsel for Defendants Silverstreak, Inc., a
Washington Corporation, Tina Marie Benson

Dated: March 31, 2022

**SILVERSTREAK, INC., A WASHINGTON
CORPORATION**

Tina Benson
Tina Benson Owner/Manager

Dated: March 31, 2022

Jay Morgan, individually and on behalf of the **INDIVIDUAL DEFENDANT**
Settlement Class

Dated: March 31, 2022


Tina Marie Benson, individually and in her
capacity as an agent, owner, and/or manager of
Silverstreak, Inc., a Washington Corporation.

Dated: March 31, 2022

**NAMED PLAINTIFF AND CLASS
REPRESENTATIVE**

Daniel Mydland individually and on behalf of
the Settlement Class

Dated: _____

EXHIBIT A
NOTICE OF
SETTLEMENT

**SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY**

***Jay Morgan And Daniel Mydland V. Silverstreak, Inc.; and Tina Marie Benson
King County Superior Court Civil Case No. 19-2-08785-4 KNT***

— NOTICE OF SETTLEMENT —

A court authorized this notice. This is not a solicitation from a lawyer. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether you act or not. Please read this notice carefully.

TO: All current and former employees of Silverstreak, Inc., who at any time from March 29, 2016 through March 30, 2022 worked as drivers for the company while based or residing in the State of Washington.

- Two former employees brought claims against Silverstreak Inc. (“Silverstreak”) and owner Tina Benson (collectively, “Defendants”) for Defendants’ alleged failure to pay truck drivers all hours worked, failure to pay overtime wages, failure to provide meal and rest breaks, and unlawful deductions. Defendants strongly deny these allegations and admit to no liability. In order to avoid continued litigations, the parties have reached a proposed Class Action Settlement.
- The Class Action Settlement includes a total settlement payment by Defendants of \$1,500,000.
- To qualify for a share of this payment, you must have been employed by Silverstreak, Inc. and worked one or more shifts as a driver for the company while based or residing in Washington between March 29, 2016, and March 30, 2022 and have not excluded yourself from the Class Action Settlement.
- You do not have to do anything to be eligible to receive a share of the settlement payment.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be eligible to get a payment for your share of the Class Action Settlement. (You may need to provide the Settlement Administrator any updated contact information to ensure you receive a payment). You will give up rights relating to the legal claims in this Case.
ASK TO BE EXCLUDED	Get no payment. This is the only option that allows you to ever be a part of any other lawsuit against Defendants with respect to the legal claims in this Case.
OBJECT	Write to the Court if you do not like the settlement and explain why. If the Settlement is approved, you will still receive a payment and you will give up rights relating to the legal claims in this Case.
GO TO A HEARING	Ask to speak in Court about the fairness of the Class Action Settlement. If the Settlement is approved, you will still receive a payment and you will give up rights relating to the legal claims in this Case.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this Case still has to decide whether to finally approve the Settlement. If the Court approves the Settlement, payments will be made after any appeals are resolved and Defendants fully fund the settlement. **We expect payments will go out in late December 2022.** Please be patient.

BASIC INFORMATION

1. Why did I get this Notice?

Defendants records show that you were employed by Silverstreak, Inc. and worked one or more shifts as a driver based or residing in Washington between March 29, 2016, and March 30, 2022. The Court has allowed this Notice to be sent to you to inform you about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to finally approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to Settlement Class Members who do not affirmatively request to be excluded from the Settlement.

This Notice explains the Case, the Class Action Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is the Case about?

The Named Plaintiffs, former employees Jay Morgan and Dan Mydland, claim that Defendants violated the wage and hour laws, when Defendants:

1. failing to pay for all hours worked, including not paying for all time spent washing trucks,
2. failing to pay at the correct prevailing wage rate and overtime rates, including when traveling to and from a prevailing wage job site,
3. failing to provide meal and rest breaks, and
4. making unlawful deductions.

Defendants deny violating any laws. Throughout this Case, Defendants maintain that their pay practices are legal under the relevant Washington laws and regulations. **Defendants deny that they failed to pay any current or former employees the wages they are entitled to.**

The Honorable _____ of the Superior Court for the State of Washington in and for King County is overseeing this Class Action. The lawsuit is known *Jay Morgan and Daniel Mydland v. Silverstreak, Inc.; and Tina Marie Benson*, King County Superior Court Civil Case No. 19-2-08785-4 KNT (the “Case”).

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” sue on behalf of other people whom they believe have similar claims. The people together are a “Class” or “Class Members.” The employees who sued, and who represent the Class, are called the Plaintiffs.

The people the Plaintiffs sue (in this case Silverstreak and Tina Benson) are called the Defendants. In a class action, one court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

4. Why is there a Settlement?

Both sides agreed to a Settlement. This allows the parties to avoid the cost of a trial, and to get the people affected compensation. The Class Representatives and their attorneys think the Settlement is best for everyone in the Class.

WHO IS IN THE SETTLEMENT

5. How do I know whether I am part of the Settlement?

The King County Superior Court has decided that everyone who fits the following description is a Class Member:

All current and former employees of Silverstreak, Inc., who at any time from March 29, 2016 through March 30, 2022 worked as drivers for the company while based or residing in the State of Washington

If it is approved, the Settlement will cover all Class Members who have not timely and affirmatively excluded themselves from the Case. To be a part of and receive any money pursuant to the Settlement, Settlement Class Members need do nothing.

THE TERMS OF THE SETTLEMENT

6. What claims are covered by the Settlement?

The Settlement will resolve all of the claims Settlement Class Members could have brought against Defendants regarding Silverstreak's alleged failure to pay for all hours worked, failure to pay the correct prevailing wage, failure to provide proper meal and rest breaks, and improper deductions in violation of Washington law, as well as any claims for attendant penalties, interest, fees, costs, attorneys' fees and all other forms of relief that were sought or could have been sought based on the facts alleged in the Complaint.

7. What are the basic terms of the Settlement?

Subject to Court approval, the essential terms of the Settlement are as follows:

Defendants will pay a total of \$1,500,00.00 as part of the Settlement, apportioned as follows:

- **Class Fund:** \$969,126.47, which will be available for the payment of Settlement Awards to Settlement Class Members who do not timely opt out of this Settlement.
- **Service Awards:** \$5,000.00 each to Named Plaintiffs and Class Representatives Jay Morgan and Dan Mydland as service awards in recognition of their efforts in prosecuting the Case.
- **Settlement Administration Expenses Award:** An Amount not to exceed \$5,500.00 to the Settlement Administrator for the processing of the Settlement, including the expenses of providing notice of the Settlement to Settlement Class Members, handling

the claims administration process, processing payments to Settlement Class Members, handling tax reporting requirements.

- **Attorneys' Fees and Costs Award:** \$450,000 to Plaintiffs' counsel for the attorneys' fees and \$65,373.53 for litigation costs they have incurred and will incur through final judgment in representing Named Plaintiffs and the Settlement Class.

Monetary Relief: The amount available to the Settlement Class is intended to compensate Settlement Class Members for the wages and other compensation the Named Plaintiffs claim that drivers allegedly were underpaid and damages they are allegedly owed as a result of the practices alleged in the Case, which Defendants vigorously deny.

Distribution of Settlement Fund: Each Settlement Class Member who does not submit a valid and timely request for exclusion will automatically have a settlement payment issued to their last known address. Your settlement payment will be calculated based on an analysis of your time records at Silverstreak, which includes your hours worked and rates of pay. The calculation of the settlement award for each individual Settlement Class Member will be based on the percentage relationship between the dollar value of your damages between March 29, 2016, and March 20, 2022 and the aggregate dollar value of all damages during that same period. The damages will be weighted based on the probable success of the claims. Checks will be mailed to Settlement Class Members by the Settlement Administrator. If any checks have not been deposited within one hundred eighty (180) days after distribution, the funds from those checks will be considered Residual Funds. If the Residual Funds after a first distribution exceeds \$50,000, a second distribution may be made. Any remaining Residual Funds will be distributed to the Legal Foundation of Washington. Defendants will not receive funds from any uncashed checks.

Tax Treatment of Settlement Awards: The entirety (100%) of each Settlement Class Member's settlement award will be treated as non-wages on which there will be no tax withholding and for which an IRS Form 1099 (marked "Other Income") shall be issued to the taxing authorities and the Settlement Class Member by the Settlement Administrator. **Each Class Member should consult a tax advisor to determine whether this allocation is appropriate for your circumstances.**

Release of Claims: Upon final approval by the Court, the Settlement Class and each Settlement Class Member who has not submitted a valid and timely written request to be excluded from the Settlement will irrevocably release all claims against Defendants for the period from March 29, 2016, through March 30, 2022, that were brought or that could have been brought based on any facts alleged in the Complaint in this Case. This Release specifically includes any claims for wages, overtime, deductions, meal breaks and rest breaks, penalties, interest, fees, costs, attorneys' fees and all other forms of relief that were sought or that could have been sought based on the facts alleged in the Complaint.

Dismissal of Action: Upon final approval, the Court will enter a judgment of dismissal of the Case with prejudice but shall retain jurisdiction to enforce the terms of the Settlement.

HOW YOU CAN GET PAYMENT

8. How can I get a payment?

To get a payment, you need do nothing. As long as you do not submit a written request to be excluded from the Settlement, you will be a Settlement Class Member and will be entitled to payment.

9. When would I get my payment?

The Court will hold a hearing on [HEARING DATE] to decide whether to finally approve the Settlement. If the King County Superior Court approves the Settlement, the parties will then have to wait to see whether there is an appeal. This will take at least thirty (30) days and, if there is an appeal, can take up to a year or more to resolve. **If there is no appeal, we expect payments will go out in December 2022.** Please be patient.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

Lawyers from the law firm of Rekhi & Wolk, P.S. and Terrell Marshall Law Group PLLC represent you and all Settlement Class Members. These lawyers are called "Class Counsel." You will not be charged extra for these lawyers. If you want to be represented by our own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

As indicated above, Class Counsel will seek payment of their attorneys' fees and costs in the combined amount of \$515,373.53, which must be approved by the Court as part of the final approval of this Settlement. Class Counsel have been working on this case since approximately March 2019 and have not received any fees for their work or reimbursements for the costs of the lawsuit.

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. How do I exclude myself from the Settlement?

If you fit the definition of a Settlement Class Member and want to exclude yourself from the Settlement, you must request exclusion in writing by [NOTICE DEADLINE]. You may be excluded as a member of the class by submitting a written request stating, "I request that I be excluded from the Class in the case of *Morgan v. Silverstreak*." The request must include your name, address, and signature. You must mail a copy of the letter to the Settlement Administrator at the following address postmarked no later than [NOTICE DEADLINE]:

If you exclude yourself from the Settlement (i.e., opt out), you will not receive any payment from the Settlement. You will also not be entitled to object to the Settlement. If you exclude yourself,

you will not be bound by the terms of the Settlement, including the Release described in Section 7, above. This means you will retain the right at your own expense to pursue any claims you may have against Defendants.

OBJECTING TO THE SETTLEMENT

13. If I don't like the Settlement, how do I tell the Court?

If you are a Settlement Class Member, have not excluded yourself from the Settlement, and do not like the Settlement or the fee request, you can object. You must do so in writing and you must state the reasons why you think the Court should not approve the Settlement. If you object, be sure to include your name, address, and telephone number, the name of the Case (*Jay Morgan and Daniel Mydland v. Silverstreak, Inc.; and Tina Marie Benson*, King County Superior Court Civil Case No. 19-2-08785-4 KNT), the reasons you object to the Settlement, and a signature. You must mail a copy of the objection to the following address **postmarked no later than [OBJECTION DEADLINE]**:

THE COURT'S FAIRNESS HEARING

14. When and where will the Court decide to approve the Settlement?

The Court will hold a Fairness Hearing at [HEARING TIME] on [HEARING DATE], at the King County Superior Court at Kent, 401 4th Ave. N, Room ____, Kent, WA 98032. The Court may provide for a video hearing in addition to or instead of an in-person hearing. If the Court provides a video hearing, the details will be posted to the website as it becomes available.

If there are objections, the Court will consider them. Judge _____ will listen to people who have asked to speak at the hearing (*see* Section 16). After the hearing, the Court will decide whether to finally approve the Settlement, including Class Counsel's request for attorneys' fees, costs, Settlement Administration Expenses, and Service Award for the Named Plaintiffs. We do not know how long that decision will take.

15. Do I have to come to the hearing?

No. Class Counsel will answer any questions Judge _____ may have, but you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not necessary.

16. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying it is your "Notice of Intention to Appear in *Jay Morgan And Daniel Mydland v. Silverstreak, Inc.; and Tina Marie Benson*, King County Superior Court Civil Case No. 19-2-08785-4 KNT." Be sure to include your name, address, phone number, and your signature. Your

Notice of Intention to Appear must be **postmarked no later than [NOTICE DEADLINE]**, and be sent to the Court, Class Counsel, and Defense Counsel at the three addresses set forth below:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Hon. _____ King County Superior Court 401 4th Ave. N, Room _____ Kent, WA 98032	Gregory A. Wolk Hardeep Rekhi Rekhi & Wolk, P.S. 529 Warren Avenue North, Suite 201 Seattle, Washington 98109 Toby Marshall Terrell Marshall Law Group PLLC 936 North 34 th Street, Suite 300 Seattle, WA 98103	Patty Eakes Andrew DeCarlow Calfo Eakes, L.L.P. 1301 2 nd Avenue #2800 Seattle, WA 98101 Benjamin Stone Lewis, Brisbois, Bisgaard & Smith, L.L.P. 1111 3 rd Avenue, Suite 2700 Seattle, WA 98101

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing—that is, if you do not mail or deliver a timely written request to exclude yourself from the Settlement—you will be part of the Settlement Class and will be entitled to a share of the Settlement. You will also be bound by the terms of the Settlement, including the Release described in Section 7, above.

GETTING MORE INFORMATION

18. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting the website [WEBSITE], which has a copy of the Settlement Agreement posted. Plaintiffs' motion for final approval of the settlement agreement, including Class Counsel's request for attorneys' fees, costs, Settlement Administration Expenses, and a Service Award for the Named Plaintiffs will be available for you to review on [DATE] at <https://www.rekhiwolk.com/classactions/silverstreak/>.