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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JEAN-LOUIS CHALAYE, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

PRIDE TRANSPORT, INC., a Corporation; and
DOES through 50, Inclusive,

Defendants.

Case No. STK-CV-UOE-2021-2766

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: November 10, 2022

Hearing Time: 9:00 a.m.

Judge: Hon. Barbara Kronlund
Dept.: 10D

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1 **I. INTRODUCTION**

2 Plaintiffs Jean-Louis Chalaye and Scott Balliet (“Plaintiffs”) seek preliminary approval of the
3 Class and Collective Action Settlement Agreement (“Agreement”)¹, which if approved, would provide
4 valuable monetary relief for approximately 1,551 members of the Settlement Class and 1,085 PAGA
5 Employees.² The basic terms of the Agreement provide for the following:

6 1. The “**Class**”, “**Class Members**” and “**Class Period**” shall mean all truck drivers who are
7 or previously were employed by Defendant Pride Transport, Inc. (“Defendant”) and performed work in
8 California and who received piece-rate (cents per mile) compensation for work performed in California
9 during the period of March 30, 2017, to February 1, 2022. Agreement at § I(B), I(H).

10 2. The “**PAGA Employees**” and “**PAGA Period**” means all truck drivers who are or
11 previously were employed by Defendant and performed work in California and who received piece-rate
12 compensation for work performed in California during the period of December 30, 2019, to February 1,
13 2022. Agreement at § I(AA)-(BB).

14 3. The “**Gross Settlement Amount**” means Three Hundred and Fifty Thousand Dollars
15 (\$350,000). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the
16 following:

17 a. “**Class Representative Service Payments**” in the amount of \$10,000 to each
18 plaintiff for their services on behalf of the Class, and for agreeing to a broad release. Agreement at §
19 III(B)(1).

20 b. “**Class Counsel Fees Payment**” and “**Class Counsel Litigation Expenses**
21 **Payment**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees,
22 currently estimated to be \$116,666.66 *and* litigation costs and expenses not to exceed \$20,000, to be
23 paid to Class Counsel. Agreement at § III(B)(2).

24 ¹ The Agreement is attached as Ex “A” to the Declaration of Shani O. Zakay (“SOZ Dec.”) at ¶ 2. All
25 citations to the Agreement incorporate by this reference a citation to the SOZ Dec., ¶ 3. Further, unless
26 indicated otherwise, capitalized terms used herein have the same meaning as those defined by the
Agreement.

27 ² Despite the sheer number of Class Members, only approximately 10% of their work was performed in
28 California, resulting in a relatively small number of shifts covered by the Settlement, which is more so in
line with a class size of 100-200 full-time California employees.

1 c. **“PAGA Payment”** of \$12,000 shall be allocated from the Gross Settlement
2 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004
3 (“PAGA Payment”). The Settlement Administrator shall pay 75% of the PAGA Settlement (“LWDA
4 Payment”) to the California Labor and Workforce Development Agency. The Settlement Administrator
5 shall distribute 25% of the PAGA Amount (“Net PAGA Amount”) to members of the PAGA
6 Employees. Agreement at § III(B)(3).

7 d. **“Settlement Administration Expenses”** not to exceed \$15,250 payable to the
8 proposed Settlement Administrator, Simpluris, for, *inter alia*, the administration of the Notice Packet
9 and Individual Settlement Shares. Agreement at § III(B)(4).

10 4. The **“Net Settlement Amount”** of approximately \$166,083.34 (Gross Settlement Amount
11 minus the requested Class Representative Service Payments, Class Counsel Fees and Expenses
12 Payment, the PAGA Payment, and Settlement Administration expenses) which will be allocated to all
13 participating members of the Settlement Class on a pro-rata basis according to the number of
14 Workweeks each Settlement Class member performed during the Class Period. The entire Net
15 Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement
16 Class resulting in an average Individual Settlement Share of approximately **\$107.08**. Agreement at §
17 III(C); SOZ Dec., ¶ 4.

18 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
19 Settlement Class is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s
20 length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the
21 Settlement provides fair value to the Settlement Class, particularly when viewed against the difficulties
22 encountered by Plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than
23 proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have
24 to bear the risk of class certification being denied or of Defendant prevailing at trial. Defendant denies
25 plaintiff’s claims and denies that it has violated the law or engaged in any unlawful conduct with respect
26 to the Settlement Class. Defendant has significant defenses to all of the claims asserted in this action,
27 and, absent this settlement, would continue to defend the litigation vigorously. Agreement at § II(G);
28 SOZ Dec., ¶ 5.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. The average Individual Settlement Shares to the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement. SOZ Dec., ¶ 6.

II. SUMMARY OF THE LITIGATION

On December 30, 2020, Plaintiff Jean-Louis Chalaye served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff Chalaye’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order. SOZ Dec., ¶ 7.

On March 30, 2021, Plaintiff Chalaye filed a class action complaint in the Superior Court of the State of California, County of San Joaquin for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code §§ 2802; and (9) Violation of the Private Attorneys General Act [Lab. Code §§ 2698, *et seq.*]. SOZ Dec., ¶ 8.

On May 13, 2021, Defendant removed the Class Action to the Federal District Court for the Eastern District of California, the Federal Class Action, Case No. 2:21-cv-00881-KJM-JDP. On June 10, 2021, the Parties filed a stipulation to remand the Action back to State Court and for leave to allow Plaintiff to file an amended complaint, which was filed concurrently with the stipulation. SOZ Dec., ¶ 9.

On July 7, 2021, the Parties’ Joint Stipulation and Motion for Leave to File First Amended Complaint and Joint Stipulation and Motion to Remand Action to State Court were granted and the First

1 Amended Class Action Complaint was deemed filed. Consequently, the Federal Class Action was
2 remanded to the San Joaquin County Superior Court. SOZ Dec., ¶ 10.

3 On February 1, 2022, the Parties participated in a full-day mediation with Tripper Ortman, Esq.,
4 an experienced and reputable mediator of wage and hour actions. At the conclusion of the full-day
5 mediation, the Parties reached an agreement for settlement based on a mediator's proposal. The proposal
6 was accepted by all Parties, who subsequently signed a Memorandum of Understanding ("MOU"). After
7 reaching an agreement in principle through the MOU, the Parties drafted and negotiated a long-form
8 settlement agreement, which is the subject of the instant motion. SOZ Dec., ¶ 11.

9 In preparation for the mediation, Defendant produced the written policies and agreements at issue
10 in this action, earning statements, and other information Plaintiffs requested in order to investigate and
11 evaluate their claims. Defendant also produced a sample of the Class Members' time and payroll data
12 that included more than 1 million cells of unique time and payroll data. As discussed *infra*, Plaintiffs'
13 counsel retained Berger Consulting Group ("BCG"), to analyze Defendant's time and payroll data.
14 Plaintiff's expert formulated a damages analysis based on the records provided by Defendant. SOZ Dec.,
15 ¶ 12.

16 On October 3, 2022 the parties filed a stipulation for leave for Plaintiff to file a second amended
17 complaint to add Plaintiff Scott Balliet as an additional plaintiff in this action and to add back class and
18 PAGA claims that Defendant (a) Failed to pay overtime wages in violation of California Labor Code §§
19 510, *et seq.*; (b) Failed to provide required meal periods in violation of California Labor Code §§ 226.7
20 & 512 and the applicable IWC Wage Order; and (c) Failed to provide required rest periods in violation of
21 California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order. SOZ Dec., ¶ 13.

22 **III. SUMMARY OF THE SETTLEMENT**

23 **A. Terms of Settlement**

24 Plaintiffs and Defendant agreed to settle the class claims in exchange for the Gross Settlement
25 Amount of \$350,000. Agreement at § III(A).

26 The Gross Settlement Amount includes (1) Individual Settlement Shares to Participating Class
27 Members and PAGA Employees; (2) the PAGA Payment of \$12,000; (3) the Class Representative
28 Service Payments in the amount of \$10,000 to each Plaintiff; (4) Attorneys' Fees to Class Counsel of

up to one-third of the Gross Settlement Amount (currently equal to \$116,666.66); (5) reimbursement of Class Counsel's litigation costs of up to \$20,000; and (6) Settlement Administration Expenses of no more than \$15,250.00. Agreement at § III(B)(1)-(4). Participating Class Members who do not opt out will receive pro rata shares of the Net Settlement Amount calculated by comparing the total Workweeks for the Class to each Participating Class Member's Workweeks. Agreement at § III(C)(2).

The Individual Settlement Share to Class Members will be allocated for tax purposes as 25% wages, and 75% penalties and interest. Agreement at § III(B)(3), III(C)(3). The employer-side payroll taxes on the portion allocated to wages will be paid by Defendant in addition to and separate from Gross Settlement Amount. Agreement at § I(P). No portion of the Gross Settlement Amount will revert to Defendant. *Id.* Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator who will deliver the monies represented by the checks to the State Controller's Office, Unclaimed Property Division in the name of the Participating Class Member, and the Participating Class Member will remain bound by the Settlement. Agreement at § III(E)(10).

B. Proposed Opt-Out and Exclusion Process

The Settlement Administrator will send Class Members the Notice of Class Action Settlement ("Class Notice") by first-class mail after checking for updated addresses through the National Change of Address database. Agreement at § III(E)(2). The Class Notice provides information regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating Individual Settlement Shares, the individual's estimated minimum payout, a statement that Class Members who take no action will release their claims and receive settlement checks, instructions regarding how to dispute the employment dates listed, instructions regarding how to request exclusion or object to the Settlement (including the opportunity to appear personally or through counsel at the final approval hearing regardless of whether a written, timely objection is submitted), the date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration Expenses, the Class Representative Service Payments and the PAGA Payment. *See* Class Notice attached to Settlement Agreement as Exhibit A.

The Class Notice informs Class Members that they have 45 days to opt out or submit a written objection. To opt out, Class Members are instructed to submit a written request for exclusion to the

1 Settlement Administrator. Class Members are informed of how they can submit a written objection to the
2 Settlement Administrator. The Class Notice also explains that Class Members may appear at the final
3 approval hearing. *See generally*, Class Notice attached to Agreement as Exhibit A. Accordingly, the
4 content of the Class Notice complies with the requirements of California Rule of Court 3.766(d).

5 **C. Proposed Release**

6 Under the proposed release, Class Members who do not exclude themselves from the Settlement
7 will be deemed to have released Defendant, its parent, sibling, affiliated companies, shareholder and
8 their respective current and former officers, directors, managing agents, non-exempt employees and
9 representatives (“Released Parties”) from “all class claims alleged or that could have been alleged based
10 on the facts alleged in the operative complaint which occurred during the Class Period” (“Released
11 Class Claims”) from March 30, 2017 to February 1, 2022. Agreement at §§ I(CC), III(F)(1). Further,
12 the Settlement provides that all PAGA Employees, irrespective of whether they opted-out of the class
13 settlement, will be bound by the PAGA Release, which is defined as “all PAGA claims alleged in the
14 operative complaint and Plaintiffs’ PAGA notice to the LWDA which occurred during the PAGA
15 Period, and expressly excluding claims for vested benefits, wrongful termination, unemployment
16 insurance, disability, social security, workers’ compensation, and PAGA claims outside of the PAGA
17 Period” (“Released PAGA Claims”) of December 30, 2019 to February 1, 2022. *Id.* at § I(DD),
18 III(F)(4).

19 As of the Settlement Effective Date, and funding in full of the Gross Settlement Amount
20 by Defendant, Plaintiffs and the Participating Class Members shall release all Released
21 Class Claims that occurred during the Class Period as to the Released Parties.

22 As of the Settlement Effective Date, and funding in full of the Gross Settlement Amount
23 by Defendant, Plaintiffs fully and finally release the Defendant and the other Released
24 Parties from any and all claims and damages of any and every kind and nature, actual and
25 potential, known and unknown, which exist or may exist as of the date the Judgment
26 becomes Final, including but not limited to all claims which were asserted or which could
27 have been asserted in the Action, and any and all claims which arise out of Plaintiffs’
28 employment with Defendant, through and including the date the Judgment becomes Final
(Plaintiffs’ Released Claims”). This release excludes only the release of claims not
permitted by law.

As of the Settlement Effective Date and upon funding in full of the Gross Settlement
Amount by Defendant, all PAGA Employees shall release all Released PAGA Claims,

1 irrespective of whether they opted-out of the class settlement, and will be bound by this
2 PAGA Release.

3 Only Plaintiffs will agree to a general release of any and all claims, arising from their employment
4 with Defendant. Agreement at § III(F)(3).

4 **IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL**

5 **A. Provisional Certification of the Class is Appropriate**

6 “[I]t is well established that the trial courts should use different standards to determine the
7 propriety of a settlement class certification.” *Global Minerals & Metals Corp. v. Superior Court*, 113
8 Cal. App. 4th 836, 859 (2003) (citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1807 n.19 (1996)).
9 “Specifically, a *lesser standard* of scrutiny is used for settlement cases.” *Id.* (emphasis added). “The
10 reason for this is that no trial is anticipated in a settlement class case,” so “case management issues ...
11 need not be confronted.” *Id.* (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997)).

12 California law authorizes class certification when a class representative has proven the existence
13 of an ascertainable and sufficiently numerous class, a well-defined community of interest among class
14 members, and certification is a fair and efficient means of adjudicating the action, rendering proceeding
15 as a class superior to alternative means. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th
16 1004, 1021. For settlement purposes, Plaintiffs contend, and Defendant does not dispute, that
17 provisional certification of the Class is appropriate. Agreement at § II(G); SOZ Dec., ¶ 21; Declaration
18 of Jean-Louis Chalaye (“Chalaye Dec.”) at ¶¶ 3-7; Declaration of Scott Balliet (“Balliet Dec.”) at ¶¶ 3-
19 7.

20 **1. The Proposed Class is Numerous and Ascertainable**

21 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
22 size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. of Supervisors*
23 (1987) 196 Cal. App. 3d 1263, 1271. In this case, the proposed Class consists of all truck drivers who
24 are or previously were employed by Defendant and performed work in California and who received piece-
25 rate (cents per mile) compensation for work performed in California during the period of March 30, 2017
26 to February 1, 2022. Defendant’s records show the class consists of approximately 1,551 individuals,
27 making joinder of all Class Members impracticable. Further, the class is readily ascertainable from
28

Defendant's business records because all Class Members are current or former employees of Defendant. SOZ Dec., ¶ 22.

2. A Well-Defined Community of Interest Exists Among Class Members

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" *Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1089 (quoting *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 470). Defendant disputes that these the community of interest requirement could be met absent a settlement, due to the "case management issues" that Plaintiffs would confront in attempting to prove class claims. *Global Minerals*, 113 Cal. App. 4th at 859. However, there is no dispute that plaintiffs' claims are suitable for class settlement under the "lesser standard of scrutiny [that] is used for settlement cases." *Id.* The application of each of these factors is discussed below.

a. The Commonality Requirement Is Met

To assess whether common questions predominate, courts focus on whether the theories of recovery advanced are likely to prove amenable to class treatment. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 327. In other words, courts determine whether the elements necessary to establish liability are susceptible of common proof, even if the class members must individually prove their damages. *Brinker*, 53 Cal. 4th at 1021-1022, 1024.

Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. SOZ Dec., ¶ 24.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Class. SOZ Dec., ¶ 25.

Here, Plaintiffs alleged that Defendant maintained uniform policies and employment practices that illegally deprived Class Members of wages, meal periods, rest periods, and business expense reimbursements. Mainly, Plaintiffs contended that Defendant allegedly failed to authorize all meal and

1 rest periods, paid Class Members by the mile and thereby failed to pay them for all time worked, and
2 required employees to utilize their personal cell phone for work purposes, but failed to reimburse them
3 for the costs. SOZ Dec., ¶ 26.

4 Plaintiffs contended that their allegations present common legal and factual questions of, *inter*
5 *alia*, whether Defendant applied the same compensation, meal period, rest period, and business expense
6 reimbursement policies to all class members; whether those policies or their implementation resulted in
7 Labor Code violations; whether Defendant's conduct was intentional; and whether Class Members are
8 entitled to damages and penalties. Further, the statutes relating to each of Plaintiffs' claims apply with
9 equal force to the entire Class. Factually, Defendant's policies and practices apply class-wide and
10 Defendant's liability can be determined by facts common to all members of the Class. The wage and hour
11 issues are both numerous and substantial, and a class action is the most advantageous method of dealing
12 with the claims of the Class. Thus, the Court can and should exercise its discretion to grant conditional
13 class certification here, for settlement purposes. SOZ Dec., ¶ 27.

14 *b. The Typicality Requirement Is Met*

15 Typical claims rely on legal theories and facts that are substantially similar to other class
16 members. *See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46. Here, Plaintiffs allege that they and
17 the other Class Members were employed by the same company and injured by the company's common
18 policies and practices related to compensation, meal periods, rest periods, business expense
19 reimbursements; they seek relief for these claims on behalf of all Class Members. SOZ Dec., ¶ 28;
20 Chalaye Dec., ¶¶ 3-4; Balliet Dec., ¶¶ 3-4. Thus, Plaintiffs' claims arise from the same employment
21 practices and are based on the same legal theories as those applicable to the other Class Members.

22 *c. The Adequacy Requirement Is Met*

23 Certification requires adequacy of both the proposed class representative and proposed class
24 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
25 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
26 claims of other members of the class. *See Capitol People First v. Dept. of Developmental Services*
27 (2007) 155 Cal. App. 4th 676, 696-697. In the present case, Plaintiffs' interests are coextensive with the
28 interests of the Class. Plaintiffs have already demonstrated their ability to advocate for the interests of

1 the Class by initiating this litigation, gathering documents and information, and obtaining a fair
2 settlement on behalf of Class Members. Likewise, Zakay Law Group, APC and Blumenthal Nordrehaug
3 Bhowmik De Blouw LLP have expended considerable time and effort on this case and will continue to
4 do so through final approval. *See generally*, SOZ Dec. Zakay Law Group, APC and Blumenthal
5 Nordrehaug Bhowmik De Blouw LLP have extensive experience in litigating wage and hour class action
6 cases, as evident from their declarations submitted concurrently herewith. Accordingly, Plaintiffs
7 should be appointed Class Representatives, and Zakay Law Group, APC and Blumenthal Nordrehaug
8 Bhowmik De Blouw LLP should be appointed Class Counsel.

9 **3. A Class Action is Superior to a Multitude of Individual Lawsuits**

10 Class treatment is superior to other methods of adjudication when the probability is small that
11 each class member will come forward to prove his or her claim and when the class approach would deter
12 and redress the alleged wrongdoing. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429 at 435, 446;
13 *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal. App. 4th 1524, 1537-1538. Here, given the size and
14 amount of each individual claim, the Class Members likely have little incentive to litigate their claims
15 on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate
16 each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-
17 base adjudication. SOZ Dec., ¶ 30.

18 **B. The Proposed Settlement Meets the Standards for Preliminary Approval**

19 Preliminary approval is warranted if the settlement falls within a “reasonable range.” *See North*
20 *County Contractor’s Ass’n, Inc. v. Touchstone Ins. Serv.* (1994) 27 Cal. App. 4th 1085, 89-90; Conte
21 & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”). In reviewing the fairness
22 of a class action settlement, due regard should be given to what is “otherwise a private consensual
23 agreement between the parties.” *Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380,
24 1389. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
25 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
26 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

27 Reasonableness and fairness are presumed where (1) the settlement is reached through “arms-
28 length bargaining”; (2) investigation and discovery are “sufficient to allow counsel and the court to act

intelligently”; (3) counsel is “experienced in similar litigation”; and (4) the percentage of objectors “is small.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802. The Settlement here already satisfies the first three factors. Plaintiffs will analyze the fourth factor in their motion for final approval.

1. The Settlement is Entitled to a Presumption of Fairness

a. The Settlement is the Result of Arm’s-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51. Here, the Settlement was the product of a mediation session with a respected mediator and negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides to serve the interests of their clients. The amount of the service awards was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs’ services on behalf of the Class. SOZ Dec., ¶ 33.

b. Class Counsel Conducted Sufficient Investigation and Discovery

Plaintiffs’ Counsel thoroughly investigated the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Plaintiffs’ Counsel assessed the value of the class claims using data and documents provided by Defendant in informal discovery. As described in Section II above, Plaintiffs’ Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class Members, workweeks, and average rate of pay in order to assess damages before mediation. Accordingly, Plaintiffs’ Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. SOZ Dec., ¶ 34.

c. Class Counsel is Experienced in Similar Litigation

Plaintiffs are represented by Zakay Law Group, APC (“ZLG”) and Blumenthal Nordrehaug Bhowmik De Blouw LLP (“BNBD”). ZLG and BNBD prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. ZLG and BNBD, either on their own, or with co-counsel are currently serving as Plaintiffs’ counsel of record in dozens of wage and hour and employment class action cases pending in both state and federal court. The attorneys working on this

1 case have been appointed class counsel in many cases, through both contested motions and settlement
2 approval motions. SOZ Dec., ¶ 35 and Exhibit 2 attached thereto; Declaration of Nicholas De Blouw,
3 Thus, ZLG and BNBD have extensive experience in similar litigation.

4 **2. The Proposed Settlement Is Reasonable Given the Strengths of Plaintiffs’**
5 **Claims and The Risks and Expense Of Litigation**

6 Courts have discretion to approve class settlements by assessing several well-recognized factors,
7 including the “strength of plaintiff’s case, risk, expense, complexity and likely duration of further
8 litigation and risk of maintaining the class action through trial.” *Munoz v. BCI Coca-Cola Bottling Co.*
9 (2010) 186 Cal. App. 4th 399, 407; *see Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116,
10 129.

11 While Plaintiffs and their counsel believed and continue to believe this is a strong case for
12 certification, they also acknowledge that, based on their investigation, Defendant has significant
13 defenses to every claim asserted in this action. Agreement, ¶ II(G). Defendant denies that the claims
14 have merit, or that it engaged in any unlawful conduct with respect to the Settlement Class. Absent this
15 settlement, Defendant will defend the claims vigorously. *Id.* Therefore, the significant risks and
16 expenses associated with class certification and liability proceedings must be taken into account. In
17 determining whether the amount offered at mediation was reasonable, Plaintiffs’ Counsel weighed that
18 figure against many risk factors. Although the amount of the Class’s maximum potential damages – if
19 proven – is substantial, the legitimate and serious risks above compelled a considerable discount for
20 settlement. SOZ Dec., ¶ 37.

21 A settlement does not have to provide 100% of the damages sought to be considered a fair and
22 reasonable settlement. *Rebney v. Wells Fargo Bank* (1991) 220 Cal. App. 3d 1117, 1139. Rather,
23 compromise is expected:

24 Compromise is inherent and necessary in the settlement process . . . even
25 if “the relief afforded by the proposed settlement is substantially narrower
26 than it would be if the suits were to be successfully litigated,” this is no
27 bar to a class settlement because “the public interest may indeed be served
28

1 by a voluntary settlement in which each side gives ground in the interest
2 of avoiding litigation.”

3 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250. Here, Plaintiffs’ Counsel calculated
4 Defendant’s total potential exposure assuming Plaintiffs prevailed on all aspects of their claims at trial
5 but weighed that value against the chance of succeeding at class certification and trial. SOZ Dec., ¶ 38.

6 First, one of Plaintiffs’ claims in the Action was that Defendant failed to pay for all hours worked.
7 Specifically, this claim centers on Defendant’s pay plan that compensated drivers on a piece-rate basis
8 (“per-mile”) without providing separate compensation for all non-productive time, allegedly in direct
9 violation of California law. In 2013, the Court in *Downtown LA Motors* established the rule that piece-
10 rate employees must be paid the agreed upon rate for each piece and must also be separately compensated
11 at, or above, the minimum wage for all time during which they are unable to earn piece-rate compensation.
12 (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36 (hereinafter “*DTLA*”). More recently,
13 Labor Code § 226.2 codified the holding of *DTLA* and mandated that employees who are compensated on
14 a piece-rate basis must receive compensation for nonproductive time separate from any piece-rate
15 compensation. Despite these rules, Defendant paid its drivers, including Plaintiffs and the Class Members,
16 on a piece-rate basis while failing to separately pay for other nonproductive time such as pre/post trip
17 work including inspections, detention time, refueling and/or repair time, time spent at the scales,
18 uncompensated drive time, and driving “empty.” As such, Plaintiffs allege that Defendant’s pay practices
19 violated *DTLA* and Labor Code § 226.2, which resulted in wage and hour violations, including, but not
20 limited to, the failure to pay at least the minimum wage for non-productive work time. Defendant
21 vigorously denied liability for claim. Defendant asserted that the vast majority of non-driving/non-
22 productive work time spent by the Class Members was worked outside of California and, therefore, not
23 compensable time under California labor laws. . Assuming one (1) hour of unpaid compensable time per
24 workweek during the Class Period, BCG estimated Defendant’s exposure for this claim at \$185,035. SOZ
25 Dec., ¶ 39.

26 Second, Plaintiffs allege that Defendant failed to provide the Class Members with compliant meal
27 and rest periods. Specifically, Plaintiffs allege that as a result of their rigorous driving schedules, Plaintiffs
28 and the Class Members were not able to take timely and duty-free meal and rest periods. Defendants

1 argued California’s laws regarding meal and periods are preempted by the Motor Carrier Safety Act of
2 1984 based on a decision issued by the Federal Motor Carrier Safety Administration (FMCSA) on
3 December 28, 2018 (California’s Meal and Rest Break Rules for Commercial Motor Vehicle Drivers, 83
4 Fed.Reg. 67470-01 (Dec. 28, 2018), 2018 WL 6809341) (“Preemption Decision”). The Preemption
5 Decision provides, “California *may no longer enforce* the [meal and rest break rules] with respect to
6 drivers of property-carrying [commercial motor vehicles] subject to FMCSA’s [hours of service] rules.”
7 (*Garcia v. Super. Ct.* (CA2/5 B315701 6/21/22) at p. 8-9, quoting the Preemption Decision.) However,
8 the Court in *Garcia*, has since provided that the use of “more limited language” in the Preemption
9 Decision, specifically the terms “may no longer enforce,” “strongly suggests **prospective, not retroactive**,
10 application.” (*Id.* at p. 9, quoting *North v. Superior Hauling & Fast Transit, Inc.*, C.D. Cal. May 31, 2019,
11 No. EDCV 18-2564 JGB(KKx)), 2019 WL 6792816 at *9) (emphasis added). Additionally, the Court
12 noted that FMCSA “could have elected to preclude the enforcement of state laws in claims that were
13 pending in reliance upon the agency’s prior interpretation” but did not. (*Id.* at 8.) The Court further
14 provided that the Preemption Decision does not bar claims that arose prior to the decision issued on
15 December 28, 2018. (*Garcia, supra*, at *9). SOZ Dec., ¶ 40.

16 Here, the class is defined as all truck drivers who are or previously were employed by Defendant
17 and performed work in California and who received piece-rate (cents per mile) compensation for work
18 performed in California from March 30, 2017 to February 1, 2022. Since the Preemption Decision does
19 not bar meal and rest claims that arose prior to the decision, Plaintiffs now argue Defendant was required
20 to provide legally complaint meal periods to Class Members from March 30, 2017, through December 28,
21 2018, but failed to do so. Notwithstanding, accounting for the strength of Defendant’s defenses, Plaintiffs
22 estimated the damages for the meal and rest period claims at \$590,952. SOZ Dec., ¶ 41.

23 Third, Plaintiffs alleged that Defendant required the Class Members to incur personal expenses for
24 the use of their personal cell phones. California employers who require employees to incur personal
25 business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Labor
26 Code § 2802(a), providing that “An employer shall indemnify his or her employee for all necessary
27 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties,
28 or of his or her obedience to the directions of the employer...”). Specifically, Plaintiffs alleged Defendant

1 required Plaintiffs and Class Members to use their personal cell phones in order to perform work-related
2 tasks, but Defendant failed to reimburse Plaintiffs and Class Members for the required business expenses
3 in violation of Labor Code Section 2802. Again, Defendant vigorously denied any liability for this claim.
4 Defendant argued that any cell phone use was voluntary, never mandatory, and contrary to written policies.
5 Further, Defendant argued that on the rare occasions where employees did incur business expenses, these
6 expenses were fully reimbursed. Plaintiffs estimated Defendant's exposure for this claim at \$715,440.
7 SOZ Dec., ¶ 42.

8 Fifth, Plaintiffs allege that Defendant's alleged violations resulted in derivative violations of Labor
9 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential
10 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiffs could not prove
11 the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
12 Defendant could argue that Plaintiffs could not show that Class Members suffered an "injury" because of
13 wage statement violations, as required by Labor Code section 226. Plaintiffs would have to overcome
14 precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S.
15 Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims);
16 *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence
17 of bad faith or actual injury). These claims represented one of Plaintiffs' most legally precarious and
18 uncertain claims. Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendant's
19 exposure for these claims at approximately \$8,517,044 (approximately \$4,642,394 for waiting time and
20 \$3,874,650 for wage statement). SOZ Dec., ¶ 43.

21 Lastly, the PAGA claims presented even higher hurdles. Plaintiffs' Counsel found Defendant's
22 exposure could potentially reach about \$23.3 million, if they proved the maximum number of violations
23 and the Court awarded the maximum penalty. However, Defendant would argue that the "subsequent
24 violation" penalty rate under PAGA was inapplicable as Defendant had not received a prior citation
25 from the Labor Commissioner, reducing the PAGA exposure significantly. *See Amaral v. Cintas Corp.*
26 *No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (holding "[u]ntil the employer has been notified that it is
27 violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing
28 underpayment of employees is a 'violation' subject to penalties."). Additionally, as explained above,

1 even if Plaintiffs proved liability on the underlying claims, there is no guarantee that they could prove
2 a violation for every pay period—indeed, the provable violation rate would likely be far less. Most
3 importantly, the court would have discretion to reduce the PAGA award based on whether the amount
4 of the award would be “unjust, arbitrary and oppressive, or confiscatory.” Cal. Labor Code § 2699(e)(2).
5 Notably, there are very few California appellate cases discussing PAGA issues. In theory, the Court
6 could reduce the award by 99% if it so wished. *E.g., Carrington v. Starbucks Corp.*, 30 Cal. App. 5th
7 504, 517 (2018) (awarding \$150,000 in PAGA penalties to prevailing plaintiff who requested “nearly
8 \$70 million in total penalties” after a finding of liability at trial). In this case in particular, Plaintiffs’
9 Counsel heavily discounted the PAGA claim based on the risk that Defendant would convince the Court
10 to dramatically reduce the PAGA penalties. SOZ Dec., ¶ 44.

11 Ultimately, the Gross Settlement Amount of \$350,000 represents **23.5%** of the total potential
12 *damages* identified by Plaintiffs’ expert. Additionally, the Gross Settlement Amount represents almost
13 **5.37%** of the total *damages and statutory penalties* identified by Plaintiffs’ expert. SOZ Dec., ¶ 45. This
14 is well within the bounds of reasonableness. (*See Viceria v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 WL
15 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6% of the
16 estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017) 2017 WL 2797811, at
17 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total
18 liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015) 2015 WL 3776765 at * 4 (Approving
19 California wage and hour misclassification settlement where the class received approximately 7.3% of the
20 estimated trial award was within the “range of reasonableness.”).).

21 **C. The Requested Service Award**

22 Plaintiffs seek service awards for accepting the responsibilities of representing the interests of
23 all Class Members and assuming risks and potential costs that were not borne by any other Class
24 Members. Chalaye Dec., ¶¶ 5-6; Balliet Dec., ¶¶ 5-6. A named plaintiff is eligible for payment that
25 reasonably compensates him for undertaking and fulfilling a fiduciary duty to represent absent class
26 members. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (Cal. App. 1st Dist. 2010);
27 *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004). Here, Plaintiffs assisted counsel in
28 gathering the evidence necessary to prosecute the class claims, maintained regular contact with counsel,

1 and reviewed the Settlement to make sure it was fair to the class. Further, Plaintiffs participated by
2 phone during mediation. No action would likely have been taken by Class Members individually, and
3 no compensation would have been recovered for them, but for Plaintiffs' services on behalf of the Class.
4 Moreover, the amount of the service award was not negotiated until after the parties agreed to the Gross
5 Settlement Amount and many other terms. SOZ Dec., ¶ 46.

6 By actively pursuing this action, Plaintiffs have furthered the California public policy goal of
7 enforcing the State's wage and hour laws. *See Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th
8 319, 340 (2004). Plaintiffs had the option to pursue their claims individually, but instead they chose to
9 pursue this class action, delaying their individual recovery until the class action settlement obtains
10 approval. As such, the Settlement permits Plaintiffs to seek a service award of up to \$10,000 each,
11 subject to final court approval. The proposed service award, both for Plaintiffs' service as the class
12 representative and for their general release of all employment claims, is reasonable and should be
13 preliminarily approved. SOZ Dec., ¶ 47.

14 **D. The Requested Attorneys' Fees**

15 The purpose of an attorneys' fee award in class action litigation is to reward counsel who
16 invested in a case despite the risk of non-payment and achieved a substantial positive result for the class.
17 Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees
18 equaling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.*, 162
19 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show that, regardless of whether the percentage
20 method or the lodestar method is used, fee awards in class actions average around one-third of the
21 recovery"). In the present case, Plaintiffs will seek Court approval of the requested attorneys' fees award
22 of up to one-third of the Gross Settlement Amount (currently equal to \$116,666.66), and up to \$20,000
23 in reimbursement of litigation costs. SOZ Dec., ¶ 48.

24 Given the extensive information exchange and exhaustive negotiations in this case, Plaintiffs'
25 Counsel have achieved a reasonable settlement through efficient and diligent work. At final approval,
26 Plaintiffs' Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation
27 costs. SOZ Dec., ¶ 49.

28 ///

1 **V. CONCLUSION**

2 The parties have negotiated a fair and reasonable Settlement of the class claims. Because
3 Plaintiffs have appropriately presented the materials and information necessary for preliminarily
4 approval, they respectfully request that the Court preliminarily approve the Settlement and schedule a
5 date to conduct the final approval hearing.

6
7 Dated: October 3, 2022

ZAKAY LAW GROUP, APLC

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9 By: _____
10 Shani O. Zakay
11 Attorneys for Plaintiffs
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