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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

RANDY L. HOFF and KEISAR E. KIRK, on
behalf of themselves and all others similarly
situated;

Plaintiffs,

vs.

DEPENDABLE HIGHWAY EXPRESS, INC.,
a California Corporation; and DOES 1-50,
inclusive.

Defendants.

Case No.: 34-2020-00272729-CU-OE-GDS

Assigned to the Hon. Richard K. Sueyoshi

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
DECLARATIONS IN SUPPORT
THEREOF; [PROPOSED] ORDER
HEARING INFO**

Date: April 28, 2021

Time: 1:30 p.m.

Dept.: 53

RES: 2555614

Complaint filed: January 7, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 28, 2021 at 1:30 p.m. or as soon thereafter as the matter may be heard by Department 53 of the Sacramento County Superior Court, located at 720 Ninth Street, Sacramento, California 95814, Plaintiffs Randy L. Hoff and Keisar E. Kirk, individually and on behalf of all others similarly situated, will and hereby do move the Court for entry of an Order preliminarily approving the Parties' class action settlement, including:

1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiffs Randy L. Hoff and Keisar E. Kirk as class representatives for purposes of settlement only;
3. Appointing Plaintiffs' counsel Joshua S. Falakassa of Falakassa Law, P.C., and Mehrdad Bokhour of Bokhour Law Group, P.C., as Class Counsel for purposes of settlement only;
4. Preliminarily approving the class action settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or object to, the settlement;
6. Setting a date for a final fairness hearing to determine, following dissemination of the Class Notice, whether to grant final approval of the Settlement.

This motion is based upon this Memorandum of Points and Authorities in support thereof; the Declarations of Joshua S. Falakassa and Mehrdad Bokhour in support thereof; the Joint Stipulation of Settlement Agreement and Release of Class and Representative Action (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Class Action Settlement; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: April 6, 2021

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

/s/

BY:

Joshua S. Falakassa, Esq.
Attorneys for Plaintiffs and the Proposed
Classes

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Motion seeks preliminary approval of a wage and hour class action settlement
4 between Plaintiffs Randy L. Hoff and Keisar E. Kirk (“Plaintiffs”), individually and on behalf
5 of all others similarly situated and Defendant Dependable Highway Express, Inc. (“Defendant”
6 or “DHE”) of a \$800,000 (the “Settlement Amount”) to be distributed to a class of approximately
7 338 individuals, as of January 29, 2021.

8 Plaintiffs seek to represent a class of similarly situated truck drivers employed by
9 Defendant in its Harbor and Truckload divisions who were paid compensation on a piece-rate
10 basis at any time during the period of January 7, 2016, through the Preliminary Approval Date
11 (the “Class Period”). This group is hereinafter referred to as the “Class” or “Class Members.”

12 The Joint Stipulation of Settlement and Release of Class and Representative Action is
13 attached as Exhibit “A” to the Declaration of Joshua S. Falakassa (“Falakassa Decl.”) submitted
14 herewith, and is hereinafter referred to as the “Settlement Agreement” or “S.A.” The proposed
15 Class Notice is attached to the Falakassa Declaration as Exhibit “B.”

16 Under the terms of the Settlement Agreement, Plaintiffs’ counsel will seek attorney’s
17 fees not to exceed one third of the Gross Settlement Amount and litigation expenses not to exceed
18 \$15,000, settlement administrator expenses not to exceed \$10,000, PAGA penalties of \$20,000
19 (of which \$15,000 or 75% will be paid to the LWDA and the remaining \$5,000 or 25% will be
20 paid to the Class Members), and Service Payments not to exceed \$10,000 to each named
21 Plaintiff. (S.A. §§ IV-VI) as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$800,000
Attorneys’ Fees (1/3)	\$266,666.66
Litigation Costs (not to exceed)	\$15,000
Administrator Costs (not to exceed)	\$10,000
PAGA payment to LWDA (75% of \$20k award)	\$15,000
Class Representatives’ Service Awards (\$10,000 each)	\$20,000
<i>Net Settlement Amount</i>	\$473,333.34

27 The Class included approximately 338 individuals as of January 29, 2021. The “Individual
28 Settlement Amounts” will be paid on a pro-rata basis based on the number of workweeks worked

1 during the Class Period in which the Class Member received some form of piece-rate
2 compensation. Assuming a total class size of 338 Class Members, the average payment to each
3 Class Member will be approximately \$1,400.39, less applicable payroll taxes. Of course, those
4 who worked more workweeks stand to recover proportionally more. (Falakassa Decl. ¶ 7)

5 The settlement is non-reversionary, and Class Members will not be required to submit
6 claim forms to receive payment, but each Class Member will receive the Class Notice containing
7 information about his/her share, and the opportunity to opt-out or object to the settlement. All
8 Class Members who do not affirmatively opt-out will receive a settlement check upon the Court
9 granting final approval. (Falakassa Decl. ¶ 6)

10 Because the settlement is fair and reasonable and was negotiated at arm's length by
11 experienced counsel and an experienced mediator following a sufficient exchange of information
12 and documents in advance of mediation, it should be preliminarily approved. Plaintiffs
13 respectfully request that the Court enter an order preliminarily approving the settlement,
14 conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes,
15 approving the proposed Class Notice, appointing Plaintiffs' counsel as class counsel, appointing
16 Simpluris as the Settlement Administrator, and scheduling a hearing for the final approval of the
17 Settlement. (Falakassa Decl. ¶ 9)

18 **II. BACKGROUND**

19 **A. THE PARTIES AND THE PROPOSED SETTLEMENT CLASS**

20 Defendant is a California based trucking company and United States Department of
21 Transportation-authorized motor carrier. Plaintiffs and the Class Members are current and former
22 drivers employed by DHE in the Harbor division or the Truckload division who were paid
23 compensation on a piece-rate basis at any point since January 7, 2016 until the Preliminary
24 Approval Date. (S.A. § I (5)).

25 **B. PROCEDURAL HISTORY**

26 On January 7, 2020, Plaintiff Hoff filed his original Complaint in the Superior Court,
27 County of Sacramento. On or about July 15, 2020, Plaintiffs filed the operative First Amended
28 Class and Representative Action Complaint, adding Keiser Kirk as an additional Class

Representative and alleging claims for (1) minimum wage violations, (2) meal period violations, (3) rest period violations, (4) failure to indemnify all necessary business expenditures, (5) wage statement violations, (6) waiting time penalties, (7) unfair competition, and (8) civil penalties under PAGA. (Falakassa Decl. ¶ 11)

Defendant retained counsel, denied the allegations and vowed to vigorously defend against them. For example, Defendant presented evidence that Plaintiffs along with other class members had signed arbitration agreements with class waiver clauses. The parties then engaged in formal discovery and conducted multiple telephonic meet and confer discussions regarding the viability of Plaintiffs' class claims. (Falakassa Decl. ¶ 14)

Thereafter, the parties agreed to explore an early resolution through mediation. In preparation for mediation, the Parties agreed to an informal discovery process where information was exchanged relating to the applicable policies and procedures, a sampling of payroll and time keeping records, size of the class, and potential value of the case. The sampling enabled Plaintiffs' counsel and its expert to fully evaluate the potential claims and extrapolate the data to the entire class. During this process, Plaintiffs and their counsel analyzed, researched, and investigated the potential claims of all similarly situated employees. (Falakassa Decl. ¶ 15)

On February 23, 2021, the parties participated in a full-day mediation with Jeffrey Krivis, Esq., who is a full-time mediator with extensive experience in wage and hour class and PAGA action lawsuits. At the conclusion of the mediation, Mr. Krivis issued a mediator's proposal calling for a class-wide settlement for \$800,000. The parties accepted the mediator's proposal, and memorialized the terms of the settlement in a long-form Settlement Agreement (Falakassa Decl., ¶ 16, Exhibit "A")

The Parties now seek the Court's preliminary approval of the Settlement.

C. SUMMARY OF PLAINTIFFS' CLAIMS

Plaintiffs alleged numerous wage and hour violations on behalf of the non-exempt truck drivers employed in DHE's Harbor and Truckload divisions who were paid compensation on a piece-rate basis at DHE during the Class Period. (Falakassa Decl. ¶ 17)

1 First, Plaintiffs allege they and the Class were paid using a piece-rate formula, including
2 but not limited to, per mile pay, per load pay and per delivery pay. As a result, Plaintiffs allege
3 Class Members were not paid for time spent on non-driving duties including, but not limited to,
4 pre-and post-trip safety inspections, preparation of trucks, loading/unloading of cargo, cleaning
5 of trucks, swapping/changing trucks, idle time in traffic, mechanical failures, lines at distribution
6 centers, late or absent drivers, fueling, and maintenance. Plaintiffs allege that DHE's piece-rate
7 pay policies failed to pay for all non-driving tasks, which must be paid for separately and hourly,
8 regardless of what the employer intended or what the employees believed was or was not included
9 in the piece-rate. As a result, Plaintiffs allege that they were and are not being paid at least the
10 minimum wage for all hours worked in violation of Labor Code §§ 204, 510, 1338, 1197.1, 1199,
11 and Wage Order No. 4. (See *Bluford v. Safeway, Inc.*, 216 Cal.App.4th 864 (2013) [holding that
12 a piece-rate system of pay, like Defendant's system, is illegal unless it separately pays drivers on
13 an hourly basis for all of their non-driving duties].) (Falakassa Decl. ¶ 18)

14 Next, Plaintiffs allege that DHE also failed to provide timely and compliant meal periods,
15 or wage premiums in lieu thereof pursuant to Labor Code § 226.7. Specifically, Plaintiffs and the
16 Class routinely worked shifts in excess of 10.0 hours but were not provided with legally complaint
17 off-duty meal periods of at least thirty (30) minutes before the end of the fifth and tenth hour of
18 work due to DHE's unlawful meal period practices that required Class Members to remain
19 working on duty during meal periods. Plaintiffs allege, Defendant's work requirements did not
20 allow Plaintiffs and other non-exempt truck drivers to take timely off-duty meal periods, as truck
21 drivers were expected and required to continue working through meal periods in order to meet
22 rigorous delivery expectations and specific timelines. (Falakassa Decl. ¶ 19)

23 Additionally, Plaintiffs allege that they and the Class were not provided with compliant
24 rest periods and were not provided with wage premiums in lieu thereof pursuant to Labor Code §
25 226.7. Plaintiffs allege that Defendant's work requirements did not allow truck drivers to take
26 timely off-duty rest periods, as truck drivers were expected and required to continue working
27 through rest periods in order to meet rigorous delivery expectations and timelines. Plaintiffs also
28 allege that Defendant failed to comply with Labor Code § 226.2, and with the requirements to

1 pay drivers for 10-minute rest periods at their regular rate of pay, or at least at California's
2 applicable minimum wage. (Falakassa Decl. ¶ 20)

3 Further, Plaintiffs allege that Defendant denied Class Members reimbursement for
4 necessary expenditures incurred as a direct consequence and requirement of performing their job
5 duties, including but not limited to, expenses associated with the usages of their personal cell
6 phones and other driving related business expenses. Consequently, Plaintiffs allege Defendant
7 failed to comply with Labor Code §§ 2802-2804 and Wage Order No. 9. (Falakassa Decl. ¶ 21)

8 Finally, Plaintiffs claim that Defendant failed to provide accurate itemized wage
9 statements, failed to provide timely pay upon separation of employment, and alleged various
10 PAGA claims arising out of the alleged Labor Code violations. (Falakassa Decl. ¶ 22)

11 **D. SUMMARY OF DEFENDANT'S DEFENSES**

12 DHE contested and denied each of Plaintiffs' material allegations on the merits and as to
13 the propriety of the class and representative action. (Falakassa Decl. ¶ 23)

14 First, as it pertained to Plaintiffs' claim based on Defendant's failure to pay minimum
15 wages for all hours worked during weeks in which Class Members received piece-rate pay, DHE
16 argued that its pay plans for the Harbor and Truckload divisions adequately compensated
17 Plaintiffs and the Class for all non-driving tasks. In addition to the mileage-based pay, DHE
18 contended that Class Members received additional pay for all non-driving tasks, including but not
19 limited to, "Meet & Turn Pay," "Pallet Jack Pay," and "Driver Count Pay". "Layover Pay" and
20 "Breakdown Pay." Defendant further contended that any unpaid non-driving tasks were minimal,
21 and subject to individualized inquiries. (Falakassa Decl. ¶ 24)

22 Furthermore, as it pertains to Plaintiffs' claim for meal and rest period violations, DHE
23 argued that these claims are preempted by federal law. Specifically, DHE relied on the Federal
24 Motor Carrier Safety Administration's ("FMCSA") determination that interstate motor carriers
25 are exempt from California's meal and rest period requirements. DHE's position was recently
26 upheld by the Ninth Circuit Court of Appeals in the case *International Brotherhood of Teamsters,*
27 *Local 2785 v. Federal Motor Carrier Safety Administration* (2021), wherein the appellate panel
28 of the Ninth Circuit concluded that the FMCSA properly determined that California's meal and

rest period requirements were state regulations “on commercial motor vehicle safety, so that they were within the agency’s pre-emption authority.” No. 18-73488, 986 F.3d 841, 854 (9th Cir. Jan. 15, 2021). (Falakassa Decl. ¶ 17). On March 25, 2021, the Ninth Circuit panel unanimously voted to deny petitions for panel rehearing and rehearing en banc. (Falakassa Decl. ¶ 25)

Notwithstanding the preemption issue, DHE also argued that its meal and rest period policies as stated in its Employee Handbook were compliant with California law, that it provided and made available 30-minute meal periods to all employees, and that employees did in fact take their required meal and rest periods. (Falakassa Decl. ¶ 26).

Moreover, DHE argued that claims for wage statement violations, waiting time penalties and PAGA penalties were derivative of other claims, which it argued had no merit. DHE further contended that Plaintiffs’ waiting time penalty and wage statement claims based on the underlying meal and rest period violations were unfounded in light of the authority in *Naranjo, et al. v. Spectrum Security Services, Inc.* (2019) No. B256232, holding that “Labor Code section 226.7 actions do not entitle employees to pursue the derivative penalties in section 203 and 226.” (Falakassa Decl. ¶ 27).

In addition, DHE contended that Plaintiffs’ claims were not suitable for class certification because individual inquiries would be required to establish, amongst other things, which employees, if any, were not compensated for all hours worked, took meal and rest periods of less than 30-minutes and why a particular employee received a meal period of less than 30-minutes on a particular shift. (Falakassa Decl. ¶ 28).

Finally, DHE relied on the fact that a majority of the Class Members signed valid and enforceable arbitration agreements that would preclude various Labor Code claims on a class wide basis. (Falakassa Decl. ¶ 29).

III. SUMMARY OF THE PROPOSED SETTLEMENT

The following is a summary of the principal terms of the Settlement Agreement.

A. SETTLEMENT CONSIDERATION AND ALLOCATION

The \$800,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1)

1 Plaintiffs' attorneys' fees and costs, as approved by the Court; (2) Service Awards of \$10,000 to
2 each Plaintiff, as approved by the Court; (3) Settlement administrator expenses, not to exceed
3 \$10,000; (4) a \$20,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
4 California Labor Code § 2699(i); and (5) The aggregate of all Individual Settlement Amounts of
5 the Settlement Class Members, including DHE's share of any payroll taxes related to Individual
6 Settlement Amounts (S.A. §§ IV-VI).

7 After all Court-approved deductions from the Settlement Amount, it is estimated that
8 \$473,333.34 will be available to pay the Individual Settlement Amounts to approximately 338
9 Class Members as of January 29, 2021. As noted above, the average settlement payment to Class
10 Members is approximately \$1400.39 each, less applicable payroll taxes, which is a fair and
11 reasonable recovery. (Falakassa Decl. ¶ 7)

12 **B. NOTICE PROCEDURES**

13 The proposed Class Notice and Explanation Form will be provided to the Class Members
14 showing the estimated amount that each Class Member will receive and the number of workweeks
15 he/she is credited (Exhibit "B" to the Falakassa Decl.). Within 21 days after entry by the Court
16 of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with
17 a list of Class Members containing names, social security numbers, dates of employment, last-
18 known addresses, phone numbers and Workweek data (the "Class Information"). (S.A. § VII (2)).

19 Within 35 days of entry by the Court of its Order of Preliminary Approval, the Settlement
20 Administrator shall calculate the number of weeks worked for each Class Member, populate the
21 Class Notice and Explanation Form for each, and send each Class Member the Class Notice via
22 first-class, United States mail. (*Id.*)

23 In the event that any Class Notice mailed to a Class Member is returned as having been
24 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
25 search, including utilization of the National Change of Address Database maintained by the
26 United States Postal Service, and seek an address correction for such Class Member(s), and a
27 second-Class Notice will be re-mailed to any new or different address obtained. (S.A. § VII (3)).

28 ///

1 **C. EXCLUSION AND OBJECTION PROCEDURES**

2 Class Members who do not timely Opt-Out of the Settlement will be deemed to participate
3 in the Settlement and shall become a Participating Class Member without having to submit a
4 claim form or take any other action. In order to Opt-Out of the Settlement, the Class Member
5 must submit a written request to the Settlement Administrator no later than 45 days after being
6 mailed by the Settlement Administrator (“Opt-Out Deadline”). (S.A. § VII (3)).

7 The Class Notice shall inform the Class Members of their right to object to the Settlement.
8 Any Class Member who wishes to object to the Settlement must submit a written objection to the
9 Settlement Administrator no later than the Opt-Out Deadline. The objection must include the
10 case name and number and must set forth, in clear and concise terms, a statement of the reasons
11 why the objector believes that the Court should find that the proposed Settlement is not in the best
12 interest of the Class and the reasons why the Settlement should not be approved, including the
13 legal and factual arguments supporting the objection. (S.A. § VII (4)).

14 **D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

15 The Settlement Administrator shall divide the Net Settlement Amount by the total number
16 of weeks worked by the Class Members during the Class Period in which the Settlement Class
17 Members received some form of piece-rate compensation, in order to determine the amount each
18 Class Member is entitled to for each week worked by Defendant (the “Amount Per Workweek”).
19 The Settlement Administrator will multiply the Amount Per Workweek by the total number of
20 Weeks Worked that each Class Member received some form of piece-rate compensation to arrive
21 at the Individual Settlement Amount for that Class Member. (S.A. § VIII (1-2)). The Class Notice
22 will inform Class Members of his/her estimated share and the number of Work Weeks he/she
23 worked during the Class Period. (S.A. § VII (3)).

24 As noted above, assuming a total class size of 338 Class Members, as of January 29, 2021,
25 the average payment to each Class Member will be approximately **\$1,400**.

26 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

27 Within 15 days after the Effective Date, Defendant shall deposit \$800,000 with the
28 Settlement Administrator to pay: (1) the class attorneys’ fees and expenses, as approved by the

1 Court; (2) the Service Awards to each Plaintiff, as approved by the Court; (3) administrative
2 expenses, as approved by the Court; (4) a \$20,000 PAGA award, 75 percent of which is to be paid
3 to the LWDA pursuant to Labor Code § 2699(i); and (5) the aggregate of all Individual Settlement
4 Amounts of Settlement Class Members, including DHE's share of any payroll taxes related to
5 Individual Settlement Amounts. (S.A. § VI (2)). No later than 28 days thereafter, the Settlement
6 Administrator shall issue payments to cover all court-approved payments. (S.A. § VIII (3-6)).

7 Settlement Class Members will have 180 days to cash his/her settlement check. If a check
8 is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable
9 efforts to re-mail it to the Settlement Class Member at his or her correct address. ((S.A. § VIII
10 (7)). The Settlement Administrator will handle any unclaimed funds and send uncashed checks
11 to the State of California Unclaimed Property Fund, subject to Court approval. (*Id.*)

12 **F. TAX TREATMENT**

13 The Parties agree that forty percent (40%) of each individual Settlement Amount shall
14 constitute wages (for which each Settlement Class Member will be issued an IRS Form W-2 for
15 such payment and applicable payroll taxes will be deducted and paid on behalf of the Class
16 Member), and the remaining sixty percent (60%) shall constitute interest and penalties (for which
17 each Settlement Class Member will be issued an IRS Form 1099 for the interest and penalty
18 allocation). (S.A. § IV (4)).

19 **G. SETTLEMENT CLASS MEMBERS' RELEASE OF CLAIMS**

20 In exchange for these payments, the Settlement Agreement Section XI provides that the
21 Settlement Class Members will release the Released Parties of the claims alleged or could have
22 been alleged based on the facts stated in the operative complaint, as follows:

23 “any and all claims, demands, causes of action, charges, and grievances, of
24 whatever kind or nature, whether known or unknown, suspected or unsuspected,
25 which Plaintiffs and the Settlement Class Members now own or hold or have at
26 any time before this date owned or held against Defendant or any of the Released
27 Parties and which arose out of, are in any way connected to, or that were made
28 or could have been made based on the facts, theories, and claims pled in the
Complaint, including, but not limited to, all wage and hour claims, whether
known or unknown, at law or in equity, which Plaintiffs and the Settlement Class
Members may now have or may have as of the execution of this Stipulation
under the wage orders of the California Industrial Welfare Commission, or other

1 federal, state, or local law, claims for penalties under PAGA, all claims for
2 minimum wage violations, meal period violations, rest period violations, failure
3 to indemnify for necessary business expenses, failure to provide accurate
itemized wage statements, waiting time penalties, unfair competition under the
California Business and Professions Code, and PAGA penalties.”

4 The time governing the release shall be the same as the Class Period. (S.A. § I (9)). The
5 preliminary approval date (*i.e.*, April 28, 2021) will thus serve as the end of the Class Period.

6 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
7 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
8 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

9 California Rule of Court 3.769(d) provides that the Court may make an order approving
10 certification of a provisional settlement class at the preliminary approval stage. It is well-
11 established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
12 of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996)
13 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in a settlement
14 class, so the case management issues inherent in determining if the class should be certified need
15 not be confronted; and the trial court’s fairness review of the settlement protects the interests of
16 the non-representative Class Members. *Id.*; *see also Officers for Justice v. Civil Service Com.* (9th
17 Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification determination and
18 the merits of the case is further attenuated within the context of the settlement evaluation process
19 . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the
20 merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S.
21 591, 620 (“Confronted with a request for settlement-only class certification, a district court need
22 not inquire whether the case, if tried, would present intractable management problems . . . for the
23 proposal is that there be no trial.”). As discussed below, for the purposes of this settlement only,
24 Plaintiff request that this Court provisionally certify the Class, as defined above, under Code of
25 Civil Procedure § 3150.

26 **A. NUMEROSITY AND ASCERTAINABILITY**

27 Numerosity is met if a proposed class is so large that joinder of all members would be
28 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if

1 the Class Members can be objectively identified and given notice of the litigation without
2 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
3 89, 101. Here, according to Defendant’s records, there are approximately 338 Class Members.
4 This figure undoubtedly satisfies the numerosity requirement.

5 **B. WELL-DEFINED COMMUNITY OF INTEREST**

6 *1. Commonality*

7 To justify certification, the class proponent must show that questions of law or fact
8 common to the class predominate over the questions affecting the individual members. *See Arenas*
9 *v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v.*
10 *Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiffs contend that the Class was subject to
11 common policies and practices relating to Defendant’s piece-rate compensation plans and meal
12 and rest periods, among other things. While the Parties dispute whether a class would be
13 appropriate if the litigation were to continue, they agree to class certification for the purposes of
14 this settlement only.

15 *2. Typicality*

16 Typicality “focuses on whether there exists a relationship between the Plaintiffs’ claims
17 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
18 *on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiffs’
19 claims are typical of the Class for the purposes of any continued litigation of the Action, but agree
20 for the purposes of this settlement only, that Plaintiffs assert claims regarding Defendant’s piece-
21 rate pay policies and alleged resulting failure to pay all minimum wages, Defendant’s alleged
22 non-complaint meal and rest break practices/policies, Defendant’s alleged non-conforming wage
23 statements, Defendant’s alleged failure to reimburse business expenses, and the provisions
24 governing the timely and complete payment of wages, which are at the core of the lawsuit.

25 *3. Adequacy of Representation*

26 The proposed class representative must establish that he or she will adequately represent
27 the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
28 546. Specifically, Plaintiffs are each adequate to represent the class because they were both

1 employed by Defendant during the Class Period, experienced the same wage and hour practices
2 as the rest of the Class, were subject to Defendant's pay plans for Harbor and Truckload drivers,
3 and understood their duties as Class Representatives, have been willing to undergo the risk of
4 litigation, and have no conflict of interest. Specifically, Plaintiff Hoff worked for DHE as a truck
5 driver in the Truckload Division and Plaintiff Kirk worked for DHE in the Harbor Division during
6 the Class Period.

7 Adequacy may be established by the fact that counsels are experienced practitioners. *See*
8 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
9 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive experience
10 in wage and hour class and PAGA actions like the instant matter. (Falakassa Decl. ¶¶ 2-5;
11 Bokhour Decl. ¶¶ 29-31)

12 4. Superiority

13 Certification of the Class for settlement purposes is superior here because there will be a
14 global resolution of all claims at once, which fosters judicial economy. Class certification for
15 settlement purposes is also vastly superior to litigation of numerous individual claims because
16 most of the claims are too small to litigate outside of the class context.

17 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,**
18 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

19 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND**
20 **APPROVAL UNDER THE CALIFORNIA RULES OF COURT**

21 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 13150.
22 This is particularly true in class actions where substantial resources can be conserved by avoiding
23 the time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
24 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
25 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
26 preliminarily approves the settlement; (2) Class Members receive notice as directed by the Court;
27 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
28 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

1 The decision to approve or reject a proposed settlement lies within the Court's sound
2 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.
3 Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval
4 hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions
5 on the contested issues of fact and law which underlie the merits of the dispute." *Officers for*
6 *Justice*, 688 F.2d at 625.

7 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and
8 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable"
9 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
10 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
11 after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk,
12 expense, [and] complexity'" of continued litigation) (citations omitted). The Court enjoys broad
13 discretion in making its fairness determination, and should consider factors including, but not
14 limited to:

15 [T]he strength of Plaintiffs' case, the risk, expense, complexity and
16 likely duration of further litigation, the risk of maintaining class
17 action status through trial, the amount offered in settlement, the
18 extent of discovery completed and the stage of the proceedings, the
experience and views of counsel . . . and the reaction of the Class
Members to the proposed settlement.

19 *Dunk, supra* (setting forth a non-exhaustive list of factors for the court's consideration at final
20 approval).

21 The above factors are not exclusive "and the court is free to engage in a balancing and
22 weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at
23 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private
24 consensual agreement between the parties." *Id.* The inquiry must be limited "to the extent
25 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
26 overreaching by, or collusion between, the negotiating parties." *Id.* (citation and internal quotation
27 marks omitted).

28 ///

1 At the preliminary approval stage, the Court need only determine that the settlement falls
2 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
3 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
4 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .
5 . . and [the settlement] appears to fall within the range of possible approval.” *Manual For Complex*
6 *Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption of fairness
7 exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
8 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
9 experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk, supra* (citing
10 *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because
11 there are no grounds to doubt its fairness.

12 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
13 **NEGOTIATIONS**

14 The settlement was the product of extensive arm’s length negotiations between counsel
15 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
16 professional, the settlement negotiations were adversarial and non-collusive in nature. The
17 settlement reached is the product of substantial effort by the parties and their counsel. Although
18 Plaintiffs and counsel believed that there was a possibility of certifying the claims, they
19 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
20 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
21 and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed
22 on any of its defenses, the employees may not have received any substantial monetary recovery.
23 (Falakassa Decl. ¶ 55)

24 **C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT**
25 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

26 Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and
27 weaknesses of this case before reaching the settlement. As described above, the settlement was
28 reached after extensive investigation and research, thorough calculations and risk evaluation, and

1 a substantial exchange of information relating to Plaintiffs and the Class Members prior to
2 mediation. (Falakassa Decl. ¶¶ 15, 55-56)

3 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

4 To evaluate a settlement, the parties must provide the trial court with “basic information
5 about the nature and magnitude of the claims in question and the basis for concluding that the
6 consideration being paid for the release of those claims represents a reasonable compromise.”
7 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
8 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
9 399, which held that an explicit statement of the maximum theoretical amount that the class could
10 recover was not necessary:

11 Greenwell misunderstands *Kullar*, apparently interpreting it to
12 require the record in all cases to contain evidence in the form of an
13 explicit statement of the maximum amount the plaintiff class could
14 recover if it prevailed on all its claims – a number which appears
15 nowhere in the record of the case. But *Kullar* does not, as Greenwell
16 claims, require any such explicit statement of value; it requires a
17 record which allows “an understanding of the amount that is in
18 controversy and the realistic range of outcomes of the litigation.

19 A settlement is not judged against what might have been recovered had a plaintiff
20 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
21 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250
22 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
23 by the proposed settlement is substantially narrower than it would be if the suits were to be
24 successfully litigated, this is no bar to a class settlement because the public interest may indeed
25 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
26 litigation.”)

27 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
28 significant legal and factual grounds for defending this action exist. As further detailed below, in
addition to disputing the merits of Plaintiffs’ claims, DHE disputed that Plaintiffs could obtain
class certification, arguing a lack of commonality of the legal claims and injuries. DHE further
argued that it complied with the applicable law, that all Class Members were paid for all non-

1 driving tasks, that claims for meal and rest periods were pre-empted by federal law, that Class
2 Members were allowed and actually took their meal and rest periods, and that any purported
3 deviations therefrom were individualized in nature, thereby limiting Plaintiffs' ability to certify
4 the class. Finally, DHE argued that Plaintiffs and Class Members signed arbitration agreements
5 that would preclude them from bringing various claims. (Falakassa Decl. ¶ 30)

6 While Plaintiffs assert that this is a suitable case for certification, they realize that there is
7 always a significant risk associated with class certification proceedings, which could significantly
8 limit the claims that they could pursue on a class basis. (Falakassa Decl. ¶ 31)

9 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
10 best practicable recovery for the Class. While the total settlement amount is, of course, a
11 compromise figure, the potential risks and opportunities of both parties were effectively weighed
12 and considered by the parties, resulting in a fair and equitable settlement. (Falakassa Decl. ¶ 32)

13 Based upon detailed data obtained through informal discovery and information exchanges,
14 and factoring in claim certification probabilities and liability probabilities, Class counsel
15 formulated detailed damages models to evaluate the claims in preparation for mediation and in
16 order to reach a realistic and reasonable resolution as further detailed below.

17 Plaintiffs' primary claim is for minimum wage violations resulting from DHE's piece-rate
18 pay policies/practices that failed to pay for all non-driving tasks. First, Plaintiffs allege that DHE's
19 pay plan for the Truckload Division, including Plaintiff Hoff, fails to adequately compensate
20 Class Members the minimum wage for all hours worked and non-driving tasks, including but not
21 limited to adequately compensate Class Members for layover and breakdown pay. Plaintiffs argue
22 that Pursuant to DHE's piece-rate pay plan, truck drivers earn far less than the California
23 minimum wage requires. As a result, Plaintiff Hoff and other Class Members claim to have been
24 paid only paid for the time spent driving, and not for the myriad of other activities related to the
25 delivery of its customers' freight. (Falakassa Decl. ¶¶ 33-34)

26 Similarly, Plaintiffs' allege that DHE's Harbor Division piece-rate pay plan fails to pay
27 Plaintiff Kirk and other Class Members separately for all hours worked. During the Class Period,
28 Plaintiff Kirk and other Harbor drivers were paid on a piece-rate basis based on a per load pay,

1 which allegedly failed to separately pay hourly wages for non-driving tasks required as part of
2 the job. Plaintiff Kirk and Class Members were required to engage in various non-driving tasks,
3 including but not limited to, fueling their trucks, filling out paperwork, maintenance, truck-wash,
4 drop and hook, loading/unloading of freight, cleaning, and mechanical repairs. (Falakassa Decl.
5 ¶ 35)

6 Based on Plaintiffs' expert's review of the data, Plaintiffs estimated there were
7 approximately 30,870 total shifts during the Class Period, with the shifts averaging 8.5 for Harbor
8 Drivers and 9.6 hours for Truckload Drivers. Plaintiff also estimated an average of 2.0 hours of
9 unpaid time (at the minimum wage) per shift during the Class Period. Thus, Plaintiffs calculated
10 Defendant's maximum potential exposure on this claim as: 30,870 x \$12 (average minimum wage
11 during the Class Period) x 2 hours of unpaid hour = \$740,880 (Falakassa Decl. ¶ 36)

12 In response to Plaintiffs' claim for minimum wage violations, DHE argued that its pay
13 plans for the Harbor and Truckload divisions adequately compensated Plaintiffs and the Class for
14 all non-driving tasks. In addition to being paid based on miles, DHE contended that it paid
15 Plaintiffs and the Class for all non-driving tasks because the mileage pay incorporated the time it
16 took to partake in additional non-driving related tasks. DHE further argued that Class Members
17 received "accessorial" pay for all non-driving tasks, including but not limited to, "Meet & Turn
18 Pay," "Pallet Jack Pay," and "Driver Count Pay". "Layover Pay" and "Breakdown Pay."
19 (Falakassa Decl. ¶ 37)

20 Based on these risks, Plaintiffs discounted its minimum wage claim by 35% for risk of
21 non-certification and an additional 20% for risk of not prevailing on the merits or failing to
22 recover the full amount sought, for an estimated exposure of \$385,257.60 (Falakassa Decl. ¶ 28)

23 Moreover, Plaintiffs alleged that Class Members routinely worked shifts in excess of 10.0
24 hours but were not provided with legally complaint off-duty meal periods of at least thirty (30)
25 minutes before the end of the fifth and tenth hour of work, due to Defendant's allegedly unlawful
26 meal period practices that required Class Members to remain working on duty during meal
27 periods. Plaintiffs allege Defendant's work requirements did not allow Plaintiffs and other Class
28 Members to take timely off-duty meal periods, as truck drivers were expected and required to

1 continue working through meal periods in order to meet rigorous delivery expectations and
2 timelines. (Falakassa Decl. ¶ 39)

3 For similar reasons, Plaintiffs allege that they and the Class Members were not provided
4 with complaint rest periods and were not provided with wage premiums in lieu thereof pursuant
5 to Labor Code § 226.7. Plaintiffs allege that Defendant’s work requirements did not allow Class
6 Members to take timely off-duty rest periods, as truck drivers were expected and required to
7 continue working through rest periods in order to meet rigorous delivery expectations. (Falakassa
8 Decl. ¶ 40)

9 Based on Plaintiffs’ expert’s review of the data, Plaintiffs estimated there were
10 approximately 3,440 total shifts during the Class Period with at least one unique meal period
11 violation and 7,283 total shifts with at least one rest break violation. Plaintiffs calculated
12 Defendant’s maximum potential exposure on this claim as: 10,723 x \$15 (average hourly rate
13 during Class Period) x 2.0 hours (2 violations) = \$321,750 (Falakassa Decl. ¶ 41)

14 First, DHE argued that it has always maintained compliant written meal and rest period
15 policies in its Employee Handbook. (Falakassa Decl. ¶ 42)

16 Further, DHE contended that Plaintiffs’ claims for meal and rest period were preempted
17 by Federal Motor Carrier Safety Administration’s (“FMCSA”) determination that interstate motor
18 carriers are exempt from California’s meal-and-rest-break rules. (See *International Brotherhood*
19 *of Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration*, 986 F.3d at 854 (2021)
20 [The Ninth Circuit concluded that the FMCSA properly determined that California’s meal and
21 rest break rules were state regulations “on commercial motor vehicle safety, so that they were
22 within the agency’s pre-emption authority”].) (*Id.*)

23 Finally, DHE maintained that Plaintiffs’ meal period claims are not amenable to class
24 treatment because individual inquiries would be required to establish which employees missed
25 second meal periods, how many each missed, and why a particular employee missed a second
26 meal period on a particular shift. Additionally, DHE contended that Plaintiffs and the Class had
27 signed arbitration agreements that would preclude class wide meal and rest period claims. (*Id.*)

28 ///

1 Based on these risks, Plaintiffs discounted its meal period claim by 90% for risk of non-
2 certification and an additional 90% for risk of not prevailing on the merits, for an estimated
3 exposure of \$3,217.50. (Falakassa Decl. ¶ 43)

4 Furthermore, Plaintiffs contend that DHE failed to provide accurate itemized wage
5 statements to Class Members due to DHE's failure to pay all minimum wages, and premium pay
6 for each meal and rest period violation. As a result, the wage statements provided to the Class
7 failed to include the accurate amount of all net and gross wages earned in violation of Labor Code
8 § 226(a)(1), (5). Plaintiffs' analysis of the data reflected approximately \$591,000 in wage
9 statement penalties based on 143 employees during the statute of limitations period corresponding
10 with Lab. Code § 226(a) during pay periods in which at least one violation allegedly occurred.
11 (Falakassa Decl. ¶ 44)

12 In response to Plaintiffs' wage statement claims, DHE contends that any alleged violations
13 were not "knowing and intentional," that Plaintiffs could not establish that they or anyone else
14 suffered "injury" as a result of any alleged wage statement violations, and that no wage statement
15 penalties can be recovered for failure to pay meal and rest period premium wages pursuant to
16 *Gustavo Naranjo, et al. v. Spectrum Security Services, Inc.*, holding that "section 226.7 actions
17 do not entitle employees to pursue the derivative penalties in section 203 and 226." 40 Cal. App.
18 5th 444, 474. Further, DHE relied on its defenses to Plaintiffs' underlying claims both on the
19 merits and to class certification. (Falakassa Decl. ¶ 45)

20 As such, Plaintiffs discounted the calculated maximum exposure by 30% for risk of non-
21 certification, and by an additional 40% for risk of being unsuccessful on the merits, to arrive at
22 an estimated total of \$248,220. (Falakassa Decl. ¶ 46)

23 Moreover, Plaintiffs argued that based on the violations above, DHE failed to pay the
24 Class all wages due upon separation of employment and is thus liable for waiting time penalties.
25 That penalty is calculated as the employee's daily wage for each day the final wages are not paid,
26 capped at a maximum of 30 days. Based on data provided by DHE, there are approximately 70
27 Class Members whose employment with Defendant ended during the relevant time period, and
28 an estimated average maximum waiting time penalty of \$3,825 (\$15.00 x 8.5 x 30) for a total

1 maximum exposure of approximately \$267,750.00 (Falakassa Decl. ¶ 47)

2 In response, DHE contends that waiting time penalties are not available for meal or rest
3 period claims after *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal. 4th 1244, which held
4 meal period claims are not actions for “nonpayment of wages,” a view adopted in *Ling v. P.F.*
5 *Chang’s China Bistro, Inc.*, 245 Cal.App.4th 1242, 1261 (2016) (“Following *Kirby*, section 226.7
6 cannot support a section 203 penalty”). Additionally, DHE argues that there was no actual wage
7 loss because Class Members were always provided full 30-minute meal periods. Finally, DHE
8 relies on its defenses to Plaintiffs’ underlying claims on both the merits and as to class
9 certification. (Falakassa Decl. ¶ 48)

10 Accordingly, Plaintiffs discounted this maximum amount by 30% for risk of non-
11 certification and by an additional 30% for risk of being unsuccessful on the merits, to arrive at an
12 estimated exposure of \$131,197.50. (Falakassa Decl. ¶ 49)

13 Finally, based on the labor code violations above, Plaintiffs contend that DHE is
14 separately liable for civil penalties pursuant to the Private Attorneys General Act (“PAGA”).
15 Based on Plaintiffs’ expert analysis, there are 3,027 pay periods in the PAGA one-year statutory
16 period. Based thereon, Plaintiffs estimated a total maximum PAGA exposure of \$591,100 (“initial
17 violations” at \$100 each). (Falakassa Decl., ¶ 35; *see also Amaral, supra*, 163 Cal.App.4th at
18 1209. (Falakassa Decl. ¶ 50)

19 However, these penalties derived from the underlying violations discussed herein, each of
20 which Defendant disputes. (See, e.g., *Green v. Lawrence Service Co.*, No. LA- CV-12-6155-
21 JAK(VBKx), 2013 WL 3907506 at *5, fn. 5 (C.D. Cal. July 23, 2013) (explaining that PAGA
22 claim’s success is determined by merits of underlying claims). Moreover, the PAGA grants courts
23 discretion to reduce penalties (Labor Code § 2699(e)(2)), and DHE argues the Court would
24 significantly reduce penalties based on its good-faith defenses to Plaintiffs’ underlying claims.
25 (Falakassa Decl. ¶ 51)

26 Based on these risks, Plaintiffs discounted that maximal figure by 30% for a risk of losing
27 on the merits and by an additional 30% for the risk of this Court reducing penalties, to arrive at
28 an estimated total of \$289,639. (Falakassa Decl. ¶ 35; *see Fleming v. Covidien, Inc.* (C.D.Cal.

1 Aug. 12, 2011, No. ED CV 10-01487 RGK (OPx)) 2011 WL 7563047 at *4 (reducing PAGA
2 penalties by more than 82%). (Falakassa Decl. ¶ 52)

3 Using these estimated figures, Plaintiffs predicted the realistic total recovery for Class
4 Members on Plaintiffs' claims would be approximately \$1,057,531.60 (Falakassa Decl., ¶ 24.)
5 The proposed settlement of \$800,000 therefore represents approximately 75% of Plaintiffs'
6 reasonably forecasted recovery. Preliminary approval is appropriate since the settlement will
7 provide significant monetary relief to the Class. (Falakassa Decl. ¶ 53)

8 For these reasons, the Parties submit that the agreed-upon settlement is fair and
9 reasonable.

10 **E. PLAINTIFFS' COUNSELS ARE EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
11 **LITIGATION**

12 The view of the attorneys actively conducting the litigation is entitled to significant weight
13 in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980)
14 87 F.R.D. 15, 18, *aff'd* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008)
15 168 Cal.App.4th 116, 128 (court must take into account "the experience and view of counsel")
16 (internal quotation and citation omitted).

17 Plaintiffs' counsels are also highly experienced in Class and PAGA litigation, having
18 collectively litigated upwards of 50 class actions and PAGA cases, having been named "Super
19 Lawyers Rising Stars" in employment litigation (a distinction awarded to only 5% of litigators),
20 and having achieved large class action settlements in California. (Falakassa Decl. ¶¶ 2-5, Bokhour
21 Decl. ¶ 20-22) Plaintiffs' counsel, operating at arm's length, weighed the strengths and risks of
22 this case, and are of the view that this is a fair and reasonable settlement in light of the nature of
23 the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law,
24 and uncertainties of class certification and litigation. (Falakassa Decl. ¶¶ 55-56).

25 **F. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

26 The proposed Class Notice (including the Explanation Form) should be approved, as it
27 fully informs the Class Members of the nature of the lawsuit and each Class Member's rights
28 under terms of the Settlement Agreement and applicable law. The manner in which the Class

1 Notice shall be disseminated, as outlined above, shall ensure that all or nearly all of the Class
2 Members shall be properly notified of the proposed settlement. (Falakassa Decl. ¶ 8, Exhibit B).

3 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
4 the Class Notice to the last known address of all Class Members complies with all the
5 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Class
6 Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation
7 expenses, and the costs of administration; (3) details about the final fairness hearing and how
8 Class Members may elect to exclude themselves or make an objection; and (4) how Class
9 Members can obtain additional information. See Class Notice and Explanation Form (Falakassa
10 Decl. ¶ 8, Exhibit B). In addition, it will inform Class Members of their estimated settlement
11 share.

12 The Court has wide discretion in approving the means of providing notice, so long as the
13 class representative "provide(s) meaningful notice in a form that should have a reasonable chance
14 of reaching a substantial percentage of Class Members." *Archibald v. Cinerama Hotels*, (1976)
15 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
16 disseminated directly to the Class Members by first class mail by the settlement administrator,
17 since Defendant has the last known addresses of all Class Members and the Settlement
18 Administrator will perform a skip trace and update those addresses for any class notices that are
19 returned and re-send the notice.

20 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement
21 Class Members with all due process protections required by the United States Constitution.
22 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because
23 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic
24 contentions or denials of the parties; (2) a statement that the court will exclude the member from
25 the class if the member so requests by a specified date; (3) a procedure for the member to follow
26 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or
27 not, will bind all members who do not request exclusion; and (5) a statement that any member
28 who does not request exclusion may, if the member so desires, enter an appearance through

1 counsel. The 45-day deadline for Class Members to exclude themselves is reasonable, as it
2 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
3 legal advice in the interim. If a Member does not opt-out, then he or she will automatically be
4 sent a settlement check. (*Id.*).

5 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
6 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

7 The fact that each member who does not opt out of the Settlement shall be mailed a check
8 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
9 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
10 settlement funds will revert to Defendant; instead, if any checks are not cashed before the
11 objection deadline, the funds will be transferred to the state’s unclaimed property department
12 subject to approval of the Court. Such terms are favored by Courts and demonstrate that there was
13 no collusion between counsel for the parties and that the Settlement is fair and favorable to the
14 Class Members.

15 **H. THE ATTORNEYS’ FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**
16 **FAIR**

17 Under the terms of the Settlement Agreement, Class Counsel is collectively requesting
18 \$266,666.66 in attorneys’ fees and costs, which is equal to one-third of the (33.33%) Settlement
19 Amount. (*See, e.g. Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in
20 the amount of \$6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes
21 a monetary fund for the benefit of the Class Members, the trial court may determine the amount
22 of a reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v.*
23 *RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving
24 fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that
25 the fee award of 1/3 of the total settlement was “well within the range of percentages which courts
26 have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.*
27 (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee
28 award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov.

1 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund
2 in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third
3 of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No.
4 C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund). (Falakassa
5 Decl. ¶¶ 40-41, 48)

6 Once the Court grants preliminary approval of the Settlement Agreement and Class Notice
7 is disseminated, Plaintiffs’ counsels will submit a request for attorneys’ fees and costs with its
8 final approval motion.

9 **I. THE CLASS REPRESENTATIVES’ SERVICE AWARDS ARE FAIR AND APPROPRIATE**

10 The Settlement Agreement provides an incentive award payment of \$10,000 to each Class
11 Representative. The proposed incentive awards are reasonable given the time and effort each
12 plaintiff devoted to this case. Plaintiffs’ efforts included: providing factual background for the
13 Class and PAGA complaint; providing documents and information about Defendant’s
14 compensation plan; participating in phone calls to discuss litigation and settlement strategy;
15 making themselves available throughout the litigation to assist with analyzing the claims and
16 defenses; helping Class Counsel prepare for the mediation and were available during mediation;
17 and reviewing the settlement documents. The Class Representatives also assumed significant risk
18 in bringing this litigation—namely, had they lost, they could have been ordered to pay
19 Defendant’s costs. (Falakassa Decl. ¶¶ 61-62)

20 The requested service awards fall within the range of incentive payments typically
21 awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises,*
22 *Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (approving
23 \$11,250 service award to each of the two class representatives in a trucker meal break class action;
24 *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL
25 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in California
26 wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010)
27 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from a \$300,000
28 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19,

2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (“the court finds Plaintiffs’ enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$ 25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement).

VI. THE COURT SHOULD APPOINT SIMPLURIS AS SETTLEMENT ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to Simpluris Class Action Administration to serve as the Settlement Administrator. Simpluris is experienced in administering class action settlements and will cost less than \$10,000 to administer this class action settlement. (Falakassa Decl. ¶ 66)

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court’s approval, the Settlement Agreement stipulates that the Court schedule a hearing for final approval of the settlement approximately 110 days after the Preliminary Approval Hearing Date, in accordance with the following schedule:

April 28, 2021	Preliminary Approval (PA) hearing
May 19, 2021 (21 days after PA)	Deadline for DHE to provide Class Information.
July 2, 2021 (35 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members
August 2, 2021 (45 days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusions and Objections to the settlement

16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs' Motion for Final Approval of Settlement or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately August 20, 2021 - 110 days after Preliminary Approval is granted)	Final Approval Hearing.
14 days after Effective Date	Defendant to deliver court approved funds to Settlement Administrator
28 days after receipt of funds	Settlement Administrator to issue checks.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for preliminary approval of their settlement.

Dated: April 6, 2021

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

/s/

BY:

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