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

KEVIN WILCOX, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

EGGLETON TRUCKING, INC., a California
corporation; DANIEL JOE EGGLETON, an
individual; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CVRI2000764

Assigned for All Purposes to:
Honorable Harold Hopp
Department 1

CLASS ACTION

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR AN
ORDER (1) PRELIMINARILY
APPROVING THE CLASS ACTION
SETTLEMENT; (2) APPROVING
NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

*[filed concurrently with Memorandum of
Points and Authorities; Declarations of
Douglas Han, Michael Sutherland,
Matthew C. Bradford, and Daniel Joe
Eggleton; [Proposed] Order; and
Compliance Chart]*

Hearing Date: August 28, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: June 1, 2020
FAC Filed: June 7, 2023
Trial Date: None Set

1 **TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE on August 28, 2023 at 8:30 a.m., or as soon thereafter as
3 this matter may be heard, at Department 1, located at 4050 Main Street, Riverside,
4 California 92501, Plaintiffs Kevin Wilcox and Dan Anderson (“Plaintiffs”), on behalf of
5 themselves and all persons similarly situated, will and hereby do move this Court pursuant
6 to Code of Civil Procedure section 382 and California Rule of Court 3.769 for an order:

- 7 (1) Preliminarily approving the class action settlement reached between
8 Plaintiffs and Defendants Eggleton Trucking, Inc. and Daniel Joe Eggleton
9 (“Defendants”), including granting preliminary approval of the following
10 Class: “all current and former hourly-paid or non-exempt employees and
11 piece-rate truck drivers of Defendants within the State of California at any
12 time during the period from June 1, 2016 to May 19, 2023” (“Class,” “Class
13 Members,” and “Class Period”). “Class Members” shall not include any
14 person who submits a timely and valid Request for Exclusion Form;
- 15 (2) Approving the form of notice of class action settlement and procedure for
16 notice to the Class; and
- 17 (3) Setting the Final Approval Hearing.

18 Pursuant to Labor Code section 2699.3(b)(4), the Parties also seek approval of the
19 proposed settlement’s allocation of funds to claims made under the Labor Code section
20 2698, *et seq.*, Private Attorneys General Act of 2004 (“PAGA”).

21 Pursuant to the Joint Stipulation and Settlement Agreement (“Settlement
22 Agreement” or “Agreement”), filed concurrently herewith as **Exhibit 1** to the Declaration of
23 Douglas Han In Support of Plaintiffs’ Motion For Preliminary Approval of Class Action
24 Settlement, Defendants do not oppose the preliminary approval of the settlement.

25 ///

26 ///

27 ///

1 Under the terms of the Agreement, the Parties agreed all claims brought on behalf
2 of the Class shall be fully and finally resolved for the total sum of \$400,000 (“Maximum
3 Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the
4 Maximum Settlement Amount after the following deductions are made (“Net Settlement
5 Amount”) shall be available for distribution to Class Members who do not submit timely
6 and valid Requests for Exclusion Form:

- 7 • up to \$140,000 to Class Counsel as the attorneys’ fees;
- 8 • up to \$20,000 to Class Counsel as the attorneys’ costs for reimbursement of
9 attorneys’ costs and expenses incurred;
- 10 • up to \$10,000 to each Plaintiff as Class Representative Enhancement
11 Payments (totaling \$20,000);
- 12 • up to \$8,000 to ILYM Group. Inc., the Settlement Administrator, as the
13 Settlement Administration Costs; and
- 14 • \$20,000 as the PAGA Payment, seventy-five percent (75%) of which
15 (\$15,000) will be paid to the California Labor and Workforce Development
16 Agency and twenty-five percent (25%) of which (\$5,000) will be paid to all
17 current and former hourly-paid or non-exempt employees and piece-rate
18 truck drivers of Defendants within the State of California at any time during
19 the period from February 12, 2019 to May 19, 2023, on a pro rata basis, as
20 their Individual PAGA Payments in accordance with the Agreement.

21 This Notice of Motion is based on the fact this is a fair and reasonable settlement
22 that benefits the Class and was the product of informed, non-collusive negotiations by the
23 Parties who were represented by experienced and able counsel. (See *Dunk v. Ford Motor*
24 *Co.* (1996) 48 Cal.App.4th 1794, 1802; Manual for Complex Litigation (Second) (1985) §
25 30.44.) The Agreement meets the legal standard for preliminary approval and is in the best
26 interests of the Class. The proposed form of notice explains the Agreement terms in a clear
27 and straightforward manner. The proposed procedures for notice provide the best practical
28

1 notice to the Class. Finally, Class Members will have an opportunity to participate in, object
2 to, and/or opt-out of the Agreement.

3 This Notice of Motion is based on this Notice, and the exhibits thereto (including the
4 Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form),
5 Memorandum of Points and Authorities, Declaration of Douglas Han, Declaration of
6 Michael Sutherland, Declaration of Matthew C. Bradford, Declaration of Daniel Joe
7 Eggleton, pleadings, records and files in the case, and such other oral and documentary
8 evidence which may be submitted at or before the hearing on this Motion.

9
10 Dated: July 13, 2023

JUSTICE LAW CORPORATION

11
12 By: 
13 Douglas Han
14 *Attorneys for Plaintiffs*

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KEVIN WILCOX, individually, and on
behalf of other members of the general
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through 100, inclusive;

Defendants.

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Assigned for All Purposes to:
Honorable Harold Hopp
Department 1

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Kevin Wilcox and Dan Anderson (“Plaintiffs,” “Plaintiff Wilcox,” and
4 “Plaintiff Anderson”) filed a wage-and-hour class action lawsuit and representative action
5 against Defendants Eggleton Trucking, Inc. and Daniel Joe Eggleton (“Defendants,”
6 “Defendant Eggleton Trucking,” and “Defendant Eggleton”) (collectively, the “Parties”) in the
7 Superior Court of California, County of Riverside, Case Number CVRI2000764 (“Action”).

8 After engaging in extensive discovery, investigation, and negotiations with the
9 assistance of an experienced mediator Honorable Victor E. Bianchini, Ret., the Parties agreed
10 to settle all claims alleged on a class wide non-reversionary basis for \$400,000.

11 The proposed settlement reflected in the Joint Stipulation and Settlement Agreement
12 (“Settlement Agreement,” “Settlement,” or “Agreement”) is fair, reasonable, and adequate, and
13 in the best interests of the Class. Plaintiffs, with the consent of Defendants, moves this Court
14 for an order: (1) granting preliminary approval of the proposed class action settlement, as
15 embodied in the Agreement; (2) approving the Notice of Class Action Settlement, Objection
16 Form, and Request for Exclusion Form (collectively, the “Notice Packet”) to be sent to Class
17 Members, and the notification schedule as set forth in the Agreement and the Proposed Order;
18 and (3) setting a hearing for final approval of the class action settlement.

19 **II. STATUS OF THE LITIGATION**

20 **A. Procedural History**

21 On February 12, 2020, Plaintiff Wilcox, a former employee of Defendants, provided
22 written notice to the California Labor and Workforce Development Agency (“LWDA”) and
23 Defendants. (Declaration of Douglas Han In Support of Plaintiffs’ Motion For Preliminary
24 Approval of Class Action Settlement (“Han Decl.”), ¶ 12.)

25 On June 1, 2020, Plaintiff Wilcox filed a wage-and-hour class action lawsuit in the
26 Superior Court of California, County of San Bernardino (Case No. CIVDS2011782), alleging
27 eight (8) causes of action. (Han Decl., *supra*, at ¶ 13.)

28 ///

On December 15, 2020, the Action was transferred to the Superior Court of California, County of Riverside (Case No. CVRI2000764). (Han Decl., *supra*, at ¶ 14.)

After engaging in extensive discovery, investigations, and negotiation, the Parties remotely attended mediation with the mediator Honorable Victor E. Bianchini, Ret., on May 19, 2023. The Parties managed to negotiate a settlement. (Han Decl., *supra*, at ¶ 15.)

In line with the settlement, Plaintiff Wilcox filed a First Amended Complaint on June 7, 2023 that: (1) added Plaintiff Anderson as a named plaintiff; (2) added a cause of action for violation of Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (3) adjusted the “Class” and “Aggrieved Employees” definitions. (Han Decl., *supra*, at ¶ 16.)

B. Investigation and Discovery

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 17.) This required thorough discussions and interviews, as well as preliminary research into the various legal issues involved. (*Ibid.*) After conducting an initial investigation, Class Counsel determined the claims were suited for class and representative action adjudication. (*Ibid.*)

After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to this Action. (Han Decl., *supra*, at ¶ 18.) This included:

- conducting formal and informal discovery, exchanging information, and meeting and conferring with Defendants’ counsel several times throughout this litigation;
- reviewing and analyzing the personnel records, drivers list, text message correspondence, employee handbooks, policy documents, arbitration agreement, earnings statements, delivery invoices, weekly reports, daily logs, daily load sheets, customer / load descriptions, job descriptions, and other documentation;
- Preparing for and deposing Defendant Eggleton on two (2) occasions and preparing for the deposition of Plaintiff Wilcox;
- Drafting motions to compel Defendants to further respond to formal discovery requests, reviewing Defendants’ oppositions, and drafting replies;

///

- Reviewing Defendants motions to compel further responses to formal discovery requests, drafting oppositions, and reviewing Defendants’ replies;
- Reviewing and opposing Defendants’ motion for summary adjudication;
- researching the applicable law and potential defenses;
- locating and interviewing several putative class members;
- constructing a damage model based on interpretations of the law; and
- reviewing information provided by Defendants at mediation. (Han Decl., *supra*, at ¶ 18.)

The Class is ascertainable because the Class Members may be readily identified by reference to Defendants’ records. (Han Decl., *supra*, at ¶ 19.) Class Counsel’s investigation revealed there are about two hundred thirteen (213) Class Members, which was confirmed by Defendants. (*Ibid.*) Class Counsel’s investigation also revealed there are approximately sixty-three (63) Eligible Aggrieved Employees. (*Ibid.*)

C. Settlement Efforts

Defendants contested liability, amount of claimed damages, and propriety of class certification. (Han Decl., *supra*, at ¶ 20.) After analyzing the relevant documents and data, Class Counsel believed this case was appropriate for resolution via mediation. (*Ibid.*) Given the high level of risk present for both sides, the Parties elected to mediate the claims and explore the possibility of settlement. (*Ibid.*)

On May 19, 2023, the Parties remotely participated in full day mediation. (Han Decl., *supra*, at ¶ 21.) During mediation, the Parties discussed all aspects of the case. (*Ibid.*) From Class Counsel’s review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel’s prior litigation experience, Class Counsel believe the recovery for each Class Member is fair and reasonable. (*Ibid.*) Based on the settlement negotiations, the Agreement was the product of a non-collusive settlement process. (*Ibid.*) This process forced the Parties to make significant compromises in the interest of reaching a full and complete settlement of this Action. (*Ibid.*)

///

1 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

2 The Parties executed an Agreement attached as **Exhibit 1** to Douglas Han’s declaration.
3 Defendants agreed to pay \$400,000 (“Maximum Settlement Amount”) on a non-reversionary
4 basis to settle and release all claims asserted in the operative complaints on behalf of the
5 proposed Class. (Han Decl., *supra*, at ¶ 23.) The Settlement Agreement defines the Class as
6 “all current and former hourly-paid or non-exempt employees and piece-rate truck drivers of
7 Defendants within the State of California at any time during the period from June 1, 2016 to
8 May 19, 2023” (“Class,” “Class Members,” and “Class Period”). (*Ibid.*) “Class Members”
9 shall not include any person who submits a timely and valid Request for Exclusion Form.
10 (*Ibid.*) The amount remaining in Maximum Settlement Amount after the following deductions
11 shall be distributed to Class Members who do not opt out (“Net Settlement Amount”):

- 12 • up to \$140,000 to Class Counsel as the attorneys’ fees;
- 13 • up to \$20,000 to Class Counsel as the attorneys’ costs;
- 14 • up to \$10,000 to each Plaintiff as the Class Representative Enhancement
15 Payments (totaling \$20,000);
- 16 • up to \$8,000 to ILYM Group, Inc. (“ILYM Group”), the Settlement
17 Administrator, as the Settlement Administration Costs; and
- 18 • up to \$20,000 as the PAGA Payment, seventy-five percent (75%) of which
19 (\$15,000) will be paid to the LWDA and twenty-five percent (25%) of which
20 (\$5,000) will be paid to Eligible Aggrieved Employees, on a pro rata basis, even if
21 they submit valid and timely Request for Exclusion Forms (“PAGA Payment” and
22 “Individual PAGA Payment”). (Han Decl., *supra*, at ¶ 23.)

23 The Net Settlement Amount (approximately \$192,000) will be distributed to the Class
24 Members. (Han Decl., *supra*, at ¶ 24.)

25 The Agreement amount was a compromise, factoring in risks related to certification,
26 liability, and damages. (Han Decl., *supra*, at ¶ 27.) Considering the circumstances of the
27 Action, Class Counsel believe the Agreement is fair and reasonable. (*Ibid.*)

28 ///

1 **A. Number of Class Members**

2 There are around two hundred thirteen (213) Class Members and sixty-three (63)
3 Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 19, 90(a).)

4 **B. Attorney's Estimate of the Recovery by the Average Class Member if the**
5 **Settlement Agreement Were Approved**

6 If the Settlement Agreement is approved, it is estimated the gross *average* Individual
7 Settlement Payment will be about \$901.41. (Han Decl., *supra*, at ¶ 24, footnote 3.) Individual
8 Settlement Payments will be calculated using the formula set forth in the Settlement
9 Agreement. (*Id.* at ¶ 25.) Individual PAGA Payments will also be calculated using the formula
10 set forth in the Settlement Agreement. (*Ibid.*)

11 **C. Discovery Exchanged**

12 Section II.B. The description of Class Counsel's investigation above provides a detailed
13 description regarding the discovery that was exchanged.

14 **D. Other Pending Litigation**

15 After making reasonable inquiries (*i.e.*, using the Courthouse New Service, and
16 conducting a PAGA case search), Class Counsel is unaware of any class, representative, or
17 other collective action in any other court in this or any other jurisdiction that asserts claims like
18 those asserted in this Action on behalf of a class or group of individuals some or all of whom
19 would also be members of the class defined in this Action. (Han Decl., *supra*, at ¶ 22.)

20 **E. Defendants' Counsel's Declaration**

21 Defendants' counsel's declaration is being submitted concurrently with this Motion.

22 **F. Settlement Administrator**

23 The Settlement Agreement provides that up to \$8,000 will be paid to the Settlement
24 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 86.) The bid
25 received from the Settlement Administrator is a Not-To-Exceed total. (*Ibid.*)

26 ///

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1 Class Counsel obtained bids from ILYM Group, Phoenix Class Action Administration
2 Solutions, and CPT Group, Inc. (Han Decl., *supra*, at ¶ 87.) ILYM Group had the most
3 competitive (lowest) bid at \$6,150 when compared to the bids from Phoenix Class Action
4 Administration Solutions that was \$8,500 and CPT Group, Inc. that was \$9,250. (*Ibid.*)

5 ILYM Group has extensive experience in administering employment class action
6 settlements. (Declaration of Michael Sutherland, ¶¶ 2-9; Exhibits A, B.)

7 **G. Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds**

8 Class Members will receive checks for their Individual Settlement Payments and
9 Individual PAGA Payments. (Han Decl., *supra*, at ¶ 88.) Checks will remain negotiable for
10 one hundred eighty (180) calendar days. (*Ibid.*) Any check not cashed within one hundred
11 eighty (180) calendar days will be void and shall be distributed by the Settlement
12 Administrator to the State Controller's Unclaimed Property Fund. (*Ibid.*)

13 **H. Release by Class Members is Limited**

14 Pursuant to the terms set forth in the Settlement Agreement, Class Members' Released
15 Claims include the following:

16 [A]ll causes of action and factual or legal theories stated in the operative
17 complaints and those based solely upon the facts alleged in the operative
18 complaints. This includes all of the following claims for relief: (a) failure
19 to pay all regular wages, minimum wages, and overtime wages due; (b)
20 failure to provide proper meal and rest breaks and to properly provide
21 premium pay in lieu thereof; (c) failure to provide complete, accurate, or
22 properly formatted wage statements and payroll records; (d) failure to
23 reimburse necessary business expenditures; (e) failure to pay waiting time
24 penalties; (f) failure to timely pay wages during employment and after
25 employment; (g) engaging in unfair business practices that could have
26 been premised on the claims, causes of action or legal theories of relief
27 described above or any of the claims, causes of action or legal theories of
28 relief pleaded in the operative complaints; (h) all claims under PAGA,
which shall only bind Plaintiffs and the State of California, that were
described in Plaintiff Wilcox's notice letter sent to the LWDA on
February 12, 2020 and only to the extent these claims were alleged in the
operative complaints; and (i) all damages, penalties, interest, attorney's
fees, and other amounts recoverable under said claims, causes of action or
legal theories of relief. The period of the Released Claims shall extend to
the limits of the Class Period ("Released Claims").

(Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 27.)

Pursuant to the terms set forth in the Settlement Agreement, Released Parties include Defendants together with their officers, directors, employees, and agents (“Released Parties”). (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 28.)

I. The Proposed Notice Packet Provides Adequate Notice to the Class Members

Within twenty-one (21) calendar days of entry of the Court’s Order Granting Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator. (Han Decl., *supra*, at ¶ 73.) Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (*Id.* at ¶ 74.) Within ten (10) calendar days after the Settlement Administrator receives the Class List, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail. (*Ibid.*)

The Notice Packet fully apprises Class Members of the nature of the lawsuit, claims involved, material terms of the Agreement, Class Members’ options thereunder, and how Class Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 75.) The Notice Packet also provides for a specific procedure to seek exclusion from the Class and for lodging objections to the Agreement. (*Ibid.*)

J. Settlement Does Not Require Any Class Members to Submit Claim Forms

Class Members are not required to submit claim forms to receive their share of the Individual Settlement Payments. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 14.)

K. Settlement Does Not Provide Any Reversion to Defendant

Pursuant to the Agreement, no portion of the Maximum Settlement Amount will revert to Defendants. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 15(b).)

L. Employer’s Share of Payroll Taxes and the Allocation of Settlement Payments

All Individual Settlement Payments will be allocated twenty percent (20%) as wages and eighty percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 57.) All Individual PAGA Payments will be allocated as one hundred percent (100%) penalties. (*Id.* at ¶ 58.)

///

1 Defendants shall pay the employers' share of applicable payroll taxes due on the
2 portion of Individual Settlement Payments allocated to wages separately and in addition to the
3 Maximum Settlement Amount. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 15(a).)

4 **M. Notice of Class Action Settlement, Objection Form, and Request for Exclusion**
5 **Form**

6 The Notice of Class Action Settlement, Objection Form, and Request for Exclusion
7 Form are attached as **Exhibits A-C** respectively in the Agreement and Proposed Order, filed
8 concurrently herewith, and were drafted to be reasonably understood by the Class Members.

9 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

10 Express judicial policy favors maintaining wage-and-hour actions as class actions.
11 (*Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richmond v. Dart Industries,*
12 *Inc.* (1981) 29 Cal.3d 462.) Any doubt as to the appropriateness of class treatment should be
13 resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, at
14 pp. 473-475.) The decision to certify a class is a procedural one, and should be based on the
15 allegations in the operative complaint, and not in the perceived factual or legal merit of the
16 class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-441.)

17 To certify a class, the Court must find the two (2) primary requirements for maintaining
18 a class action: (1) there must be an ascertainable class; and (2) there must be a well-defined
19 community of interest in the questions of law and fact involving the parties to be represented.
20 (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow Cab Company*
21 (1967) 67 Cal.2d 695, 704.) The criteria are met here for the reasons set forth below.

22 **A. There Is A Numerous and Ascertainable Class**

23 Ascertainability is determined by examining class and size and means to identify class
24 members. (See *Vasquez v. Superior Court*, *supra*, 4 Cal.3d at pp. 821-822; *Reyes v. Board of*
25 *Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class members are
26 "ascertainable" if they may be readily identified without unreasonable expense or time.

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1 Plaintiffs contend, and Defendants do not dispute, the requirement of numerosity is
2 met. The documents and information exchanged reflect a Class of approximately two hundred
3 thirteen (213) Class Members. (Han Decl., *supra*, at ¶ 90(a).) The Class Members were
4 identified by Defendants’ payroll and personnel records. (*Id.* at ¶ 90(b).)

5 **B. There Is A Well-Defined Community of Interest**

6 A community of interest is established by the predominance of common issues of law
7 and fact. (See *Vasquez v. Superior Court*, *supra*, 4 Cal.3d at p. 811.) The requirement of a
8 community of interest:

9 [D]oes not depend upon an identical recovery, and the fact that
10 each member of the class must prove his separate claim to a
11 portion of any recovery by the class is only one factor to be
12 considered ... The mere fact that separate transactions are involved
13 does not of itself preclude a finding of the requisite community of
14 interest so long as every member of the alleged class would not be
required to litigate numerous and substantial questions to
determine his individual right to recover subsequent to the
rendering of any class judgment which determined in plaintiffs’
favor whatever questions were common to the class.

15 (*Vasquez v. Superior Court*, *supra*, 4 Cal.3d. at p. 809.)

16 Plaintiffs contend, and Defendants do not dispute, common issues of fact and law
17 predominate as to each of the claims, and the Class is united in its proof. As Plaintiffs alleged a
18 single scheme, “the relevant proof [does] not vary among class members” and “clearly presents
19 a common question fundamental to all class members.” (See *In Re NASDAQ Market-Makers*
20 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
21 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no
22 hesitancy” in inferring class-wide causation, class-wide injury, and class-wide damages when a
23 common course of action has been shown. (*B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d
24 1341, 1350.) This inference ““eliminates the need for each class member to prove individually
25 the consequences of the defendants’ actions to him or her.”” (*Id.* at p. 1351 (quoting *Rosack v.*
26 *Volvo of America Corp* (1982) 131 Cal.App.3d 741, 753 [emphasis added])).

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1 This Action involves, *inter alia*, a determination about Defendants’ alleged: (1) failure
2 to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
3 business expenses; (3) failure to pay minimum wages; (4) failure to pay overtime wages; (5)
4 failure to pay final wages when required; (6) failure to provide accurate wage statements; and
5 (7) largely derivative claims under the Business & Professions Code and PAGA. (Han Decl.,
6 *supra*, at ¶ 90(e).) Plaintiffs contend these above-mentioned practices affected Class Members
7 in the same way. (*Ibid.*) While Defendants maintained otherwise, these issues will not be
8 decided based on facts peculiar to each Class Member but based on facts common to the Class.
9 Finally, these issues of liability can be determined on a class-wide basis.

10 C. Plaintiffs’ Claims Are Typical

11 A class representative’s claims are typical when they arise from the same event,
12 practice, or course of conduct that gives rise to the claims of other putative class members and
13 if their claims rest on the same legal theories. The class representative’s claims must be
14 “typical” but not necessarily identical to the claims of other class members. It is sufficient that
15 the representative is similarly situated so that he or she will have the motive to litigate on
16 behalf of all class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom*
17 *Kitchens v. Owens-Illinois, Inc.*, *supra*, 191 Cal.App.3d at p. 1347 (“[I]t has never been the law
18 in California that the class representative must have identical interests with the class
19 members.”).) Thus, it is not necessary the class representative should have personally incurred
20 all the damage suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.*
21 (2001) 91 Cal.App.4th 224, 228.)

22 Plaintiffs contend, and Defendants do not dispute, the claims are typical of Class
23 Members’ claims because they arose from the same factual basis and are based on the same
24 legal theories. (Han Decl., *supra*, at ¶ 90(c).) Plaintiffs were employed by Defendants during
25 the Class Period and subject to the allegedly unlawful meal and rest break policies and pay
26 practices at issue in this matter. (*Ibid.*) The central issues of this litigation (whether Defendants
27 failed to pay all wages, failed to provide meal and breaks, failed to pay premium wages, etc.),
28 which would arise if this were an individual action brought by Plaintiffs, apply to the other

1 Class Members. (Han Decl., *supra*, at ¶ 90(c).) Consequently, the answer to these questions
2 would determine Defendants' liability to the entire Class. (*Ibid.*)

3 **D. Adequacy of Class Counsel and Class Representatives**

4 Class Counsel are experienced in class actions, have represented their clients zealously,
5 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 90(d); Exhibit 2.) Moreover,
6 Plaintiffs' interests are aligned with those of the Class Members, suffered the same injuries as
7 the Class Members, and have no conflicts of interest. (*Id.* at ¶ 90(d).)

8 **E. Predominance and Superiority**

9 Individual issues do not predominate over those common to the Class. (Han Decl.,
10 *supra*, at ¶ 90(f).) Furthermore, the class action mechanism is superior to individualized actions
11 because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 90(g).)

12 **V. THE TWO-STEP APPROVAL PROCESS**

13 Any settlement of class litigation must be reviewed and approved by the Court. This is
14 done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review
15 after notice has been distributed to the class members for their comment or objections. The
16 Manual for Complex Litigation (Third) states:

17 "Approval of class action settlements involves a two-step process. First,
18 counsel submits the proposed terms of settlement and the court makes a
19 preliminary fairness evaluation. If the preliminary evaluation of the
20 proposed settlement does not disclose grounds to doubt its fairness or
21 other obvious deficiencies, such as unduly preferential treatment of class
22 representatives or of segments of the class, or excessive compensation for
23 attorneys, and appears to fall within the range of possible approval, the
24 court should direct that notice ... be given to the class members of a
25 formal fairness hearing, at which arguments and evidence may be
26 presented in support of and in opposition to the settlement." § 30.41.

27 Preliminary approval by the court is a conditional finding that the settlement appears to
28 be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength
of the findings made by a judge at a preliminary hearing or conference concerning a tentative
settlement proposal may vary. The court may find the settlement proposal contains some merit,
is within the range of reasonableness required for a settlement offer, or is presumptively valid

subject only to any objections that may be raised at a final hearing.” (4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).)

The procedures for the Parties’ submission of a proposed settlement for preliminary approval by the court also are discussed in *Newberg on Class Actions*:

When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause, *Newberg on Class Actions*. at § 11.24.

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

As a matter of public policy, the courts both encourage the use of the class action device and favor settlement over continued litigation. (See, e.g., *Linder v. Thrifty Oil Co.*, *supra*, 23 Cal.4th at p. 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.”).)

The courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. There is a presumption the negotiations were conducted in good faith. (*Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when settlement was reached by experienced counsel familiar with the litigation. (*Rodriguez*, at p. 24; *Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087.)

In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court laid out several factors that should be analyzed in determining if a class action settlement should be approved. These factors include: (1) strength of the case; (2) risk, expense, complexity, and likely duration of further litigation; (3) risk of maintaining class action status through trial; (4) amount offered in settlement; (5) extent of discovery completed and stage of the proceedings;

(6) experience and views of counsel; (7) presence of a governmental participant; and (8) class members' reaction to the settlement.

The Settlement Agreement satisfies these factors. Class Counsel conducted extensive formal and informal discovery before entering meaningful settlement negotiations, including a detailed analysis of Defendants' policies and time and pay records and participating in depositions. (Han Decl., *supra*, at ¶¶ 17-18.) This discovery permitted Class Counsel to evaluate the strengths and weaknesses of the case and the risks associated with further litigation. (*Id.* at ¶ 21.) In addition, Class Counsel are experienced in the handling of wage-and-hour class actions and support the Settlement Agreement. (*Id.* at ¶¶ 3-10; Exhibit 2.)

A. The Strength of Plaintiffs' Case.

The claims in this action include failure to provide meal and rest breaks, failure to pay minimum wages, failure to pay overtime wages, failure to pay final wages when due, failure to provide accurate wage statements, failure to reimburse necessary business expenses, and related claims for violations of the Business & Professions Code and for penalties under PAGA. (Han Decl., *supra*, at ¶ 29.)

Class Counsel felt confident the claims would be certified given Defendants' policies and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 30-66.)

B. The Risks Associated with the Merits.

Plaintiffs contend Defendants regularly assigning employees a high volume of loads to deliver per day coupled with prioritizing employees delivering as many loads as possible pressured employees into working through most of their meal and rest breaks. (Han Decl., *supra*, at ¶¶ 31, 34-35.) If employees attempted to take their meal and rest breaks, they ran the risk of falling behind on their delivery schedules, thereby purportedly leaving employees with no choice but to skip their breaks. (*Ibid.*) Finally, Defendants would attempt instances of noncompliant meal breaks by supposedly instructing employees to clock out for breaks and continue working. (*Id.* at ¶ 35.) Defendants countered that they always had in place compliant meal and rest break policies, rarely, if ever, assigned a high volume of loads to deliver per day, and frequently encouraged employees to take their breaks. (*Id.* at ¶¶ 32, 36.) In other words, if

1 there were instances of employees not receiving compliant meal and rest breaks, it was because
2 employees were choosing to prioritize delivering loads rather than being pressured to do so.
3 (Han Decl., *supra*, at ¶¶ 32, 36.) By extension, Defendants may even produce evidence to
4 demonstrate employees voluntarily waived their right to take meal and rest breaks and that
5 only a handful of employees worked the requisite number of hours to receive additional breaks.
6 (*Ibid.*) Finally, Defendants contended Class Counsel will have to gather declarations from
7 putative class members to prove the existence of improper, uniform practices. (*Ibid.*)

8 As the consideration concerning meal and rest breaks would likely depress the damages
9 *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the
10 meal and rest break claims. (Han Decl., *supra*, at ¶¶ 33, 37.) If Defendants' contention are
11 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,
12 would be no recovery for the Class Members.

13 Plaintiffs also alleged Defendants failed to pay and properly calculate all applicable
14 wages owed, including minimum wages and overtime wages. (Han Decl., *supra*, at ¶ 38.)
15 Defendants purportedly expected employees to engage in various pre-shift and post-shift duties
16 for which they were not compensated. (*Ibid.*) For example, before clocking in and after
17 clocking out, Defendants expected employees to perform mechanical inspections of their
18 vehicles, fuel up their vehicles, complete paperwork, perform safety checks, return tools and
19 materials, and don and doff their uniforms. (*Ibid.*) Defendants even apparently attempted to
20 downplay the wages owed by instructing employees to clock out and continue working after
21 employees had worked for fourteen (14) hours. (*Ibid.*) Defendants countered these claims are
22 not suitable for class treatment. (*Id.* at ¶ 39.) Defendants argued their policies expressly
23 prohibited off-the-clock work and always reminded employees to be clocked in before
24 performing any tasks. (*Ibid.*) By extension, Defendants contended they required employees to
25 confirm the accuracy of the hours they worked at the end of each pay period to ensure
26 employees were being properly compensated. (*Ibid.*) Finally, Defendants asserted any
27 unrecorded hours would likely be subject to individual inquiries and unlikely to be certified.
28 (*Ibid.*) Given the difficulty in certifying this claim, Class Counsel applied a discount to

1 damages. (Han Decl., *supra*, at ¶ 40.) If Defendants’ contentions held true, the outcome of this
2 claim would be little to no recovery for employees.

3 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties**

4 To establish liability for wage statement violations, Plaintiffs would first have to
5 establish liability for the underlying claims. But Defendants argued the claim for Labor Code
6 section 226(e) penalties would depend on the underlying rest break, meal break, and wage
7 claims, meaning it would be subject to the same defenses and counterargument described
8 above. (Han Decl., *supra*, at ¶ 43.) Defendants added the above-mentioned violations did not
9 occur every pay period and that section 226(e) penalties are not automatic. (*Ibid.*) Thus,
10 Defendants concluded employees need to show they suffered injury because of Defendants’
11 noncompliance and that such noncompliance was knowing and intentional. (*Ibid.*)

12 Similarly, Defendants countered the claim for section 203 penalties is dependent on the
13 underlying meal break, rest break, and wage claims, meaning it would be subject to the same
14 defenses and counterargument described above. (Han Decl., *supra*, at ¶¶ 47-48.) With these
15 penalties, there is always the risk the trier of fact would not have held Defendants’ actions were
16 done “willfully.” A good faith belief in a legal defense can preclude a finding of willfulness.
17 (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.)
18 Plaintiffs contend the Class Members are entitled to minimum wages, overtime wages, and
19 premium wages, which were allegedly not paid at the time of their termination or resignation.
20 (Han Decl., *supra*, at ¶¶ 45-46.) Defendants counter that they provided employees with
21 reasonable opportunities to take breaks, asked employees to confirm the accuracy of their
22 hours, and had good-faith defenses under *Brinker* and its progeny. (*Id.* at ¶¶ 47-48.)

23 **D. The Risks Associated with the PAGA Penalties.**

24 Labor Code section 2699.3 gives aggrieved employees the right to recover civil
25 penalties for specific Labor Code violations by way of a civil action. The PAGA provides a
26 penalty amount of one hundred dollars (\$100) for each aggrieved employee per pay period for
27 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
28 period for each subsequent violation. (Lab. Code, § 2699, subd. (e)(2).) If a civil penalty is

1 provided in a specified amount by the Labor Code section relating to the underlying alleged
2 Labor Code violation, that amount shall apply. (Lab. Code, § 2699, subd. (e)(2).) PAGA also
3 gives the Court discretion to award any lesser amount than the maximum civil penalty (*Id.*
4 “[A] court may award a lesser amount than the maximum civil penalty amount specified by
5 this part if, based on the facts and circumstances of the particular case, to do otherwise would
6 result in an award that is unjust, arbitrary and oppressive, or confiscatory.”)).

7 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
8 Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.2, 226.3, 226.7, 510, 512(a), 558,
9 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 54.) Defendants
10 asserted, regardless of the results of the underlying causes of action, PAGA penalties are only
11 permissive and discretionary. (*Ibid.*) Defendants maintained, in addition to the strong
12 arguments against the underlying claims, they had a strong argument it would be unjust to
13 award maximum PAGA penalties given the law’s unsettled state. (Han Decl., *supra*, at ¶ 54;
14 See *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112 (reducing
15 penalties by 30% under this authority).) Without stacking and limited to the initial violation,
16 PAGA penalties would be about **\$6,300** (63 employees x \$100 initial violation) on the low end
17 and **\$37,800** (63 employees x \$100 initial violation x 6 theories of recovery) on the high end.
18 (Han Decl., *supra*, at ¶¶ 55-58.)

19 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl.,
20 *supra*, at ¶ 59.) Thus, allocating \$20,000 to PAGA civil penalties was reasonable given that
21 Defendants are paying an additional \$380,000 in the class settlement. (*Ibid.*) If PAGA penalties
22 are negotiated in good faith and “there is no indication that [the] amount was the result of self-
23 interest at the expense of other Class Members,” such amounts are considered reasonable.¹
24 (Han Decl., *supra*, at ¶ 59.)

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27 ¹ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S.
28 Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579
 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate
 any damages to the PAGA claims.”).)

1 Finally, Class Counsel are confident they could successfully prove Defendants' alleged
2 wage-and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 60.) Plaintiffs
3 allege Defendants knowingly assigned employees a high volume of deliveries to complete per
4 day and intentionally discouraged employees from taking their meal and rest breaks. (*Ibid.*) By
5 extension, Defendants purportedly knowingly instructed employees to record their meal breaks
6 even if they were not given an opportunity to take their breaks to conceal instances of
7 noncompliant breaks. (*Ibid.*) Yet Plaintiffs assert Defendants knowingly and intentionally
8 failed to pay employees premium wages for noncompliant meal and rest breaks despite these
9 violations. (*Ibid.*) Plaintiffs also contend Defendants intentionally instructed employees to
10 perform various duties pre-shift and post-shift for which employees were not compensated.
11 (*Ibid.*) This apparently extended to Defendants knowingly not paying employees all minimum
12 wages and overtime wages owed. (*Ibid.*) Defendants knew employees were working additional
13 hours off-the-clock but were not being paid for these additional hours worked. (*Ibid.*)

14 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

15 Given the risks outlined above, the issues in this case were complex and the risk for
16 Plaintiffs and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶
17 67-71.) A class trial would have required extensive preparations, thereby requiring the Parties
18 to expend a substantial amount of time. (*Ibid.*) Given the complexity and unsettled nature of
19 the issues, it is likely any outcome at trial would have resulted in a lengthy and costly appeal.
20 (*Ibid.*) Finally, an appeal would result in further delay for the Class Members who have already
21 waited years for resolution in this matter. (*Ibid.*)

22 **F. The Risk of Maintaining Class Action Status Through Trial.**

23 In class actions, decertification is always a possibility. There is always a risk a trial of
24 this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*
25 (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class
26 actions, decertification is a real risk Class Counsel must consider.

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G. The Amount Offered in Settlement.

There is no doubt the Agreement is the result of vigorous, adversarial, non-collusive, and arm's-length negotiations. Using the information provided by Defendants, Class Counsel estimated the full value of the case if Plaintiffs prevailed at trial.

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be around **\$3,418,955** on the low end and **\$3,595,767.50** on the high end. (Han Decl., *supra*, at ¶ 62.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$707,250	70%	60%	\$84,870
Meal Break Premiums	\$1,178,750	60%	60%	\$188,600
Overtime/Minimum Wage: Off-the-Clock	\$353,625 to \$530,437.50	50%	50%	\$88,406.25 to \$132,609.38
Unreimbursed Business Expenses	\$99,330	20%	80%	\$15,892.80
Wage Statement Penalty	\$252,000	70%	60%	\$30,240
Waiting Time Penalty	\$828,000	70%	60%	\$99,360
MAXIMUM TOTAL EXPOSURE	\$3,418,955 to \$3,595,767.50			\$507,369.05 to \$551,572.18

Based on this analysis, the total estimated realistic exposure for this case would be approximately **\$507,369.05** on the low end and **\$551,572.18** on the high end. (Han Decl., *supra*, at ¶ 63.) The Maximum Settlement Amount is about eleven percent (11.12%) of the high end total potential exposure at trial and around seventy-two percent (72.52%) of the high end total realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure Plaintiffs could expect to receive for meal and rest break premiums and unpaid wages. (Han Decl., *supra*, at ¶ 64.) Plaintiffs added the realistic exposure for rest break premiums and meal break premiums (\$84,870 + \$188,600 = \$273,470). (*Ibid.*) Plaintiffs then added the \$273,470 to the low end realistic exposure for unpaid wages due to off-the-clock work (\$273,470 + \$88,406.25 = \$361,876.25). (*Ibid.*) The realistic exposure of \$361,876.25 Plaintiffs can expect to receive if they were to prevail at trial for meal and rest break premiums

1 and low end unpaid wages due to off-the-clock work represents about twenty percent (20.05%)
2 of the low end total realistic exposure and PAGA penalties ($\$361,876.25 \div \$1,805,169 =$
3 $0.2004 \times 100 = 20.05\%$). (Han Decl., *supra*, at ¶ 64.) Because this represents about twenty
4 percent (20%) of wages, allocating twenty percent (20%) as wages and eighty percent (80%) as
5 interest and penalties pursuant to the Agreement is appropriate. (*Ibid.*)

6 Once Class Counsel determined the maximum potential damages, they established a
7 fair and reasonable settlement for the Class after analyzing the likelihood of success on the
8 merits. (Han Decl., *supra*, at ¶ 27.) After reviewing the facts and circumstances of this matter,
9 Class Counsel concluded the Class had a reasonable likelihood of success on the core claims.
10 (*Id.* at ¶¶ 62-71.) Defendants dispute this contention, deny all wrongdoing in this matter, and
11 are confident they have strong legal and factual defenses to the claims. (*Id.* at ¶¶ 68, 70.) Class
12 Counsel determined the likelihood of success for the claims was not as strong because of
13 various defenses. (*Ibid.*) After considering the likelihood of success and the challenges faced
14 with certification, Class Counsel determined the Agreement amount was fair and reasonable.

15 Class Counsel devoted a considerable amount of time to the prosecution of this Action.
16 (Han Decl., *supra*, at ¶¶ 17-21.) This included, among other things: (1) interviewing Plaintiffs
17 at length on repeated occasions; (2) drafting pleadings, conducting discovery, and meeting and
18 conferring with Defendants' counsel; (3) reviewing and analyzing personnel records, employee
19 handbooks, policy documents, earning statements, and daily logs; (4) researching the law; (5)
20 interviewing putative class members; (6) preparing for and attending mediation; and (7)
21 negotiating, updating, and finalizing the Settlement Agreement. (Han Decl., *supra*, *passim*.)

22 Finally, Class Counsel believe the Settlement Agreement serves the best interests of the
23 Class. The courts can consider counsel's recommendations if counsel have been involved in
24 litigation for some period, appear to be competent, and have experience with this type of
25 litigation, and significant discovery has been completed. (See *Newberg*, § 11.47.)

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1 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE FAIR**
2 **AND REASONABLE**

3 It is appropriate to provide a relatively modest additional incentive payment to the class
4 representative. (See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)
5 901 F.Supp. 294.)

6 Plaintiffs are entitled to reasonable service payment for their efforts in this matter.
7 (Han Decl., *supra*, at ¶ 81.) Plaintiffs spent significant time better apprising themselves of their
8 rights, deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)
9 Plaintiffs decided to vindicate not only their rights but also those of fellow coworkers by filing
10 a wage-and-hour class action lawsuit. (*Ibid.*)

11 By suing Defendants, Plaintiffs increased the risk of retaliation by future employers.
12 (Han Decl., *supra*, at ¶ 82.) The lawsuit has cost Defendants considerable resources and such
13 conduct will not be lost on prospective employers. (*Ibid.*) This risk of losing employment
14 opportunities is real in the information age that contains quick background checks. (*Ibid.*)

15 But Plaintiffs did not allow fears of the potential repercussions of being the class
16 representative to deter them from acting for the benefit of Class Members. (Han Decl., *supra*,
17 at ¶ 83.) Instead, Plaintiffs have been intimately involved in this case since its inception.
18 (*Ibid.*) Plaintiffs devoted a substantial amount of time helping Class Counsel effectively
19 develop and prosecute this Action at every stage of the litigation. (*Ibid.*)

20 Plaintiffs spent hours with Class Counsel detailing their knowledge of Defendants'
21 practices. (Han Decl., *supra*, at ¶ 84.) Plaintiffs diligently, adequately, and fairly represented
22 Class Members and did not place their interests above the Class Members. (*Ibid.*) The Class
23 Representative Enhancement Payments are intended to recognize Plaintiffs' time and effort,
24 and the amount requested is fair and appropriate based on their contributions. (*Ibid.*)

25 Therefore, Class Counsel believe the Class Representative Enhancement Payment of
26 \$10,000 to each Plaintiff (totaling \$20,000) is fair and reasonable. (Han Decl., *supra*, at ¶ 85.)

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1 **VIII. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS**
2 **REASONABLE AND SHOULD BE APPROVED**

3 Under the Agreement, Class Counsel request, without opposition from Defendants, an
4 award of Attorneys' Fees and Costs consisting of: (1) up to \$140,000 as the attorneys' fees;
5 and (2) up to \$20,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 78.) The requested fees
6 are fair compensation for a law firm involved in undertaking complex, risky, expensive, and
7 time-consuming litigation on a contingent basis. (*Id.* at ¶¶ 78-79.)

8 California courts look to the federal courts on class action approvals. The Ninth Circuit
9 recognized an appropriate method for awarding attorneys' fees in class actions is to award a
10 percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air*
11 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common fund/percentage
12 approach is to "spread litigation costs proportionally among all the beneficiaries so that the
13 active beneficiary does not bear the entire burden alone." (*Ibid.*) Courts have discretion to
14 choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash.*
15 *Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-1296.)

16 Court expressed frustration with the "lodestar" approach for deciding fee awards. The
17 percentage approach can be preferable to the lodestar in certain situations because it: (1) aligns
18 the interests of class counsel and absent class members; (2) encourages efficient resolution of
19 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces
20 the demands on judicial resources. (*In re Activision Securities Litigation*, 723 F.Supp. 1373,
21 1378-1379.) The Ninth Circuit has used the percentage of the common fund approach to
22 determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
23 1994) 47 F.3d 373, 378-379 (approving attorneys' fee of 33 1/3% of settlement fund).)

24 When considering the facts and circumstances, the request for attorneys' fees is within
25 the range of reasonableness. Historically, courts have awarded percentage fees in the range of
26 twenty percent (20%) to fifty percent (50%) of the common fund, depending on the
27 circumstances of the case. (*Newberg*, at § 14.03; see also *In re Activision Securities Litigation*,
28 *supra*, 723 F.Supp. at p. 1378.) *Newberg* further notes: "[A]chievement of a substantial

1 recovery with modest hours expended should not be penalized but should be rewarded for
2 considerations of time saved by superior services performed.” (*Newberg*, at §§ 14-10:14-11.)

3 The attorneys’ fees request provided for in the Settlement Agreement is commensurate
4 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
5 greater than the percentage requested in this case. (See, e.g., *In re Pacific Enterprises*
6 *Securities Litigation*, *supra*, 47 F.3d at p. 379 (affirming an award equal to 33% of the
7 common fund); *In re Activision Securities Litigation*, *supra*, 723 F.Supp. at p. 1375 (awarding
8 plaintiffs’ counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
9 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
10 fund); and *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee
11 award to counsel of one-third (1/3) of recovery achieved).)

12 In similar lawsuits, courts approved attorney’s fees consistent with or greater than the
13 percentage requested herein. (See *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County
14 Superior Court, Case No. BC 262247 (May 2005) (Honorable Anthony J. Mohr); *Moreno v.*
15 *Miller Brewing*, Los Angeles County Superior Court, Case No. BC 278170 (April 2004)
16 (Honorable Douglas M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange
17 County Superior Court, Case No. 01CC00140 (Honorable Stephen J. Sundvold); *Kimbell v.*
18 *Abercrombie & Fitch Stores, Inc.*, Los Angeles County Superior Court, Case No. BC 277359
19 (Sept. 2006) (Honorable Kenneth R. Freeman); and *Daum v. Claim Jumper Restaurants*,
20 Orange County Superior Court, Case No.02CC10201 (2006) (Honorable Ronald L. Bauer).)

21 Class Counsel have borne the entire risk and costs of litigation and will not receive any
22 compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 78-79.) The Court should
23 also consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the
24 requested attorneys’ fees award for Class Counsel is reasonable.

25 **A. Fee Splitting Agreement**

26 Class Counsel is not splitting the costs associated with the settlement with any other
27 individuals or firms. (Han Decl., *supra*, at ¶ 89.)

28 ///

1 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
2 **APPROVAL**

3 The Parties request this Court, as part of the preliminary approval process, to grant the
4 following relief and make the following orders:

5 1. Review and approve the Settlement Agreement attached to Douglas Han's
6 declaration as **Exhibit 1**;

7 2. Review and approve the Notice of Class Action Settlement, Objection Form,
8 and Request for Exclusion Form attached to the Proposed Order as **Exhibits A-C** respectively;

9 3. Consider and determine the proposed class action settlement as set forth in the
10 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

11 4. Conditionally certify the action as a class action for settlement purposes only
12 and preliminarily approving the proposed class action settlement and Settlement Agreement;

13 5. Approve and appoint Douglas Han, Shunt Tatavos-Gharajeh, and Chris Peterson
14 of Justice Law Corporation to serve as Class Counsel for settlement purposes;

15 6. Approve and appoint ILYM Group as the Settlement Administrator to handle
16 the notice procedures as set forth in the Settlement Agreement;

17 7. Approve the proposed allocation of funds to the claims made under PAGA;

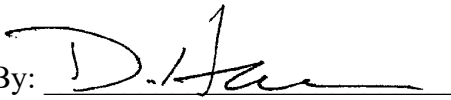
18 8. Order Defendants to disclose the Class List to ILYM Group in accordance with
19 the manner set forth in the Settlement Agreement;

20 9. Order ILYM Group to mail the Notice Packet to Class Members; and

21 10. Set a date for the Final Approval Hearing.

22
23 Dated: July 13, 2023

JUSTICE LAW CORPORATION

24
25 By: 
26 Douglas Han
27 Attorneys for Plaintiffs
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On July 14, 2023, I served the foregoing document described as

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL

for the following case: **Wilcox, et al. v. Eggleton Trucking Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM-772403-20**
Court Case No.: CVRI2000764
Riverside County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 14, 2023, at Pasadena, California.



Mariah Anderson