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20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 DENSON M. SALES; ANDRE
23 CLEMONS; ROBERT BEJAR; and
24 MARTIN CHAVEZ on behalf of
25 themselves, all others similarly situated,
26 and on behalf of the general public,

27 Plaintiff,

28 v.

UNITED ROAD SERVICES, INC.;
URS MIDWEST, INC. and DOES 1-
100, inclusive,

Defendants.

Case No. 4:19-cv-08404-JST

*[Assigned to the Honorable Jon S. Tigar;
Department 6]*

**PLAINTIFFS ROBERT BEJAR AND
MARTIN CHAVEZ'S NOTICE OF
MOTION AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: March 7, 2024
Time: 2:00 p.m.

Complaint Filed: November 18, 2019
SAC Filed: May 18, 2023
Trial Date: May 20, 2024

1 **TO: ALL PARTIES HEREIN AND TO THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that Plaintiffs Robert Bejar and Martin Chavez move this Court
3 for an order: (1) confirming certification of the Class for settlement purposes only; (2) finally
4 approving the settlement embodied in the Joint Stipulation of Settlement and Release of Class
5 Action Claims; (3) confirming Phoenix Settlement Administrators as the Settlement
6 Administrator and granting the requested fee for its services as Settlement Administrator; (4)
7 finally approving the Private Attorneys General Act of 2004 Payment; and (5) entering judgment.

8 This motion is set for determination on March 7, 2024, at 2:00 p.m. in Courtroom No. 6
9 (2nd Floor) in the above-entitled courthouse located at 1301 Clay Street, Oakland, California
10 94612. This motion is based upon this notice, the accompanying Memorandum of Points &
11 Authorities filed herewith, the accompanying Declaration of David Mara, Esq., filed herewith,
12 the Joint Stipulation of Settlement and Release of Class Action Claims and all exhibits thereto,
13 the Order Granting Preliminary Approval, the filings on record in this case, and upon such further
14 evidence, both documentary and oral, that may be presented at the hearing of this motion.

15
16 Dated: February 8, 2024

MARA LAW FIRM, PC

/s/ David Mara
David Mara, Esq.
Jill Vecchi, Esq.
Representing the Class

17
18
19
20 Dated: February 8, 2024

HUNTER PYLE LAW

/s/ Hunter Pyle
Hunter Pyle, Esq.
Andrea A. Núñez, Esq.
Representing the Class

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1 **I. INTRODUCTION**

2 Named Plaintiffs Robert Bejar and Martin Chavez (hereinafter “Plaintiffs”) seek final
3 approval of the Parties’ Joint Stipulation of Settlement and Release of Class Action Claims
4 (hereinafter “Joint Stipulation” or “Settlement Agreement”¹). The proposed settlement is a non-
5 reversionary \$7,500,000 class action settlement achieved on behalf of 321 Class Members. The
6 Class is defined as “all individuals who signed Independent Contractor Service Agreements with
7 URS, who were assigned to a business unit in California, and who drove in California at any time
8 from November 18, 2015 to March 29, 2022. If the individual executing the Independent
9 Contractor Service Agreement did so on behalf of a corporation or LLC, then the individual or
10 individuals who were principals or owners of the corporation or LLC shall be considered part of
11 the Class.” (Exhibit 1 at Section I, Paragraph 5, Page 2).

12 The settlement is projected to pay each Class Participant, meaning any and all Class
13 Members who did not submit a timely and valid Opt-Out Request,² an average payment of
14 approximately \$17,010.45. (*See* Declaration of Lluvia Islas of Phoenix Settlement Administrators
15 in Support of Motion for Final Approval of Class Action Settlement (“Islas Dec.”) ¶ 13). The
16 highest estimated payment to Class Participants is approximately \$40,961.89 and the lowest
17 payment, representing one workweek worked, is \$111.92. (Islas Dec. ¶ 14).

18 In addition, the settlement includes PAGA Aggrieved Individuals. PAGA Aggrieved
19 Individuals are Class Members that worked at any time during the PAGA Period. (Exhibit 1 at
20 Section I, Paragraph 25, Page 5). The PAGA Period is February 10, 2019, through September 26,
21 2023 (the date the Court granted preliminary approval). (Exhibit 1 at Section I, Paragraph 28,
22 Page 5). There are 242 PAGA Aggrieved Individuals. (Islas Dec. ¶ 14). The Joint Stipulation
23 allocates \$126,325 to civil penalties recoverable under PAGA, of which 75% – or \$94,743.75 –
24 will be paid to the LWDA; and 25% – or \$31,581.25 – will be distributed among PAGA
25 Aggrieved Individuals. (Exhibit 1 at Section III, Paragraph 3, Page 12). The average payment to
26

27 ¹ The Joint Stipulation is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as
28 Exhibit 1. “Exhibit 1” referenced herein refers to the Joint Stipulation.

² Exhibit 1 at Section I, Paragraph 11, Page 3.

1 PAGA Aggrieved Individuals is approximately \$130.50. (Islas Dec. ¶ 14). The highest payment
2 to PAGA Aggrieved Individuals is approximately \$311.02, and the lowest payment is
3 approximately \$1.46. (Islas Dec. ¶ 14).

4 In response to the Class Notice, no Class Members requested to be excluded from the
5 settlement. (Islas Dec. ¶ 8). Therefore, all 321 Class Members are participating in the settlement.
6 Twenty-eight (28) Class Members – representing 9% of the Class – submitted identical objections
7 to the settlement, which, for the reasons discussed herein, should be overruled as they do not alter
8 the conclusion that the settlement is fair and reasonable and in the best interests of the Class. For
9 the reasons that follow, it is respectfully requested the Court grant this motion and find the
10 settlement is fair, reasonable, and adequate.

11 **II. PROCEDURAL BACKGROUND**

12 URS transports vehicles for customers throughout the continental United States. To
13 accomplish that business purpose, URS contracts with drivers it classifies as independent
14 contractors. Plaintiffs contend that these drivers should be classified as employees.

15 **1. Plaintiffs' Claims**

16 On November 18, 2019, Plaintiff Denson M. Sales filed his Class Action Complaint for
17 Damages, Injunctive Relief, Declaratory Relief, and Restitution in the Superior Court of Alameda
18 County, California, under Case No. HG19043648 (the “*Sales Action*”), alleging that URS had
19 misclassified him as an independent contractor and asserting a number of wage-and-hour claims
20 under California law. On December 24, 2019, URS removed the case to this Court. (Mara Dec. ¶
21 8).

22 On February 11, 2020, Plaintiff Andre Clemons filed his Class Action Complaint for
23 Damages and Injunctive Relief in the Superior Court of Alameda County, California, under Case
24 No. RG20054053 (the “*Clemons Action*”), alleging that URS had misclassified him as an
25 independent contractor and asserting a number of wage-and-hour claims under California law.
26 On April 3, 2020, URS removed the case to this Court under Case No. 4:20-cv-02274. (Mara Dec.
27 ¶ 9).

28 On April 23, 2020, the Court related the *Sales Action* with the *Clemons Action*. On May

1 4, 2020, the Court granted a request to permit Plaintiff Sales and Plaintiff Clemons to file a joint
2 complaint incorporating Plaintiff Clemons and his claims into the *Sales* Action. The *Clemons*
3 Action was subsequently dismissed on May 27, 2020. (Mara Dec. ¶ 10).

4 Plaintiff Sales and Plaintiff Clemons jointly filed a First Amended Complaint on May 4,
5 2020, asserting the following Claims under California law: (1) failure to pay all straight time
6 wages at statutory minimum wage; (2) failure to provide meal periods; (3) failure to authorize
7 and permit rest periods; (4) failure to reimburse/illegal deductions; (5) violations of unfair
8 competition law; (6) knowing and intentional failure to properly itemize wage statements; (7)
9 failure to timely pay all wages owed at termination; and (8) violations of California’s Private
10 Attorneys General Act (“PAGA”). Plaintiffs Sales and Clemons brought these claims on behalf
11 of themselves and all others similarly situated. (Mara Dec. ¶ 11).

12 On May 18, 2023, a Second Amended Complaint was filed pursuant to which Plaintiffs
13 Robert Bejar and Martin Chavez were added into this action as plaintiffs and class representatives.
14 (Mara Dec. ¶ 12).

15 On May 17, 2023, Plaintiffs Robert Bejar and Martin Chavez filed an amended PAGA
16 letter with the Labor and Workforce Development Agency (“LWDA”). (Mara Dec. ¶ 13).

17 **2. Relevant Procedural History**

18 URS filed a Motion to Dismiss Plaintiff Clemons’ and Plaintiff Sales’ Meal and Rest
19 Break Claims on May 18, 2020. URS argued that the FMCSA hours-of-service preemption
20 determination prohibited enforcement of any meal and rest break claims with regard to interstate
21 drivers of commercial motor vehicles. After briefing was completed, the Court granted this
22 motion on July 17, 2020, and dismissed Plaintiff Clemons’ and Plaintiff Sales’ second and third
23 causes of action with prejudice. (Mara Dec. ¶ 14).

24 Plaintiff Clemons and Plaintiff Sales filed a Motion for Class Certification on April 29,
25 2021. Plaintiff Clemons and Plaintiff Sales requested certification of the following class: “All
26 individuals who signed Independent Contractor Service Agreements with URS, who were
27 assigned to a business unit in California, and who drove in California at any time from November
28 18, 2015, to the date the Court enters an order certifying the matter as a class action.” After

1 briefing was completed, the Court granted this motion on March 29, 2022, and certified the Class
2 as defined. (Mara Dec. ¶ 15).

3 **3. Settlement Negotiations**

4 This settlement was reached with the assistance of an experienced mediator, Jeffrey Ross,
5 after arms-length bargaining by the Parties at a formal mediation scheduled on November 4, 2021,
6 and extensive subsequent conversations. The Parties' settlement has been memorialized in a long
7 form settlement agreement. The Parties now seek the Court's final approval of their Joint
8 Stipulation, which is attached to the Declaration of David Mara, Esq., in Support of Plaintiffs'
9 Motion for Final Approval of Class Action and PAGA Settlement as Exhibit 1. (*See* Mara Dec. ¶
10 18).

11 **III. SUMMARY OF SETTLEMENT**

12 The principal terms of the Joint Stipulation are as follows:

13 **1. The Settlement Class**

14 The Class set forth in the Joint Stipulation is defined as follows:

15 All individuals who signed Independent Contractor Service Agreements with URS, who
16 were assigned to a business unit in California, and who drove in California at any time
17 from November 18, 2015 to March 29, 2022. If the individual executing the Independent
18 Contractor Service Agreement did so on behalf of a corporation or LLC, then the
individual or individuals who were principals or owners of the corporation or LLC shall
be considered part of the Class.

19 (Exhibit 1 at Section I, Paragraph 5, Page 2). There are 321 individuals who fall within this Class
20 definition.

21 **2. The Gross Settlement Amount**

22 Under the Joint Stipulation, URS shall pay \$7,500,000 (referred to as the "Gross
23 Settlement Amount" or "GSA") to fully and finally settle this matter. This is the total amount
24 URS is required to pay under the Joint Stipulation. ***No portion of the GSA will revert to URS for***
25 ***any reason.*** Subject to the Court's final approval, the following deductions will be made from the
26 GSA: (1) \$1,875,000 (25% of the GSA) to Class Counsel for attorneys' fees to compensate them
27 for their work on the lawsuit, as well as any work remaining in securing Court approval of the
28 settlement, administration of the settlement, and obtaining dismissal of the lawsuit; (2)

1 \$27,320.60 (previously estimated not to exceed \$50,000) to Class Counsel for reimbursement of
2 their litigation costs; (3) \$11,000 to Phoenix Settlement Administrators (“Phoenix”) for its work
3 performed and to be performed in administering the settlement; and (4) \$94,743.75 to the
4 California Labor and Workforce Development Agency (“LWDA”) for its 75% share of the
5 \$126,325 PAGA Payment.

6 **3. Settlement Payments to Class Members and PAGA Aggrieved Individuals**

7 After all deductions have been made, it is estimated that \$5,460,354.40 (“Net Settlement
8 Amount” or “NSA”) will be available for disbursement to Class Participants, resulting in an
9 average payment of \$17,010.45. (Islas Dec. ¶ 13). Per the Joint Stipulation, “Class Participants”
10 are defined as “[a]ny and all Class Member(s) who do not submit a timely and valid Opt-Out
11 Request.” (Exhibit 1 at Section I, Paragraph 11, Page 3). The money available for payout to these
12 individuals comes out of the NSA, which is what remains of the GSA after subtracting all Court
13 approved attorneys’ fees and costs, settlement administration costs, and the LWDA’s portion of
14 the PAGA Payment.

15 Individual Settlement Amounts to be paid from the Net Settlement Amount to the Class
16 Participants will be determined as follows:

17 Each of the Class Participants shall receive a pro rata share of the Net Settlement Amount.
18 Pro rata shares shall be determined by, first, determining the value of a single Week
19 Worked by dividing the Net Settlement Amount by the total number of Weeks Worked
20 by all Class Participants during the Class Period. Individual Settlement Amounts will be
21 determined by multiplying the value of a single Week Worked by the number of the total
22 Weeks Worked by each Class Participant during the Class Period.

(Exhibit 1 at Section IV, Paragraph 1(b), Page 14), Therefore, the value of each Class Member’s
Individual Settlement Share ties to the amount of weeks that he or she worked.

23 In addition, each PAGA Aggrieved Individual will receive a proportionate share of the
24 PAGA Payment that is allocated for distribution to PAGA Aggrieved Individuals (i.e., 25% of
25 the PAGA Payment). Under the terms of the Joint Stipulation, \$126,325 is allocated to civil
26 penalties recoverable under PAGA, of which 75%, or \$94,743.75, will be paid to the LWDA; and
27 25%, or \$31,581.25, will be distributed among PAGA Aggrieved Individuals. (Exhibit 1 at
28 Section III, Paragraph 3, Page 12). Each of the PAGA Aggrieved Individuals shall receive a pro

1 rata share of the PAGA Payment available for distribution to PAGA Aggrieved Individuals. Pro
2 rata shares shall be determined as follows:

3 Each of the PAGA Aggrieved Individuals shall receive a pro rata share of the PAGA
4 Payment available for distribution to PAGA Aggrieved Individuals. Pro rata shares shall
5 be determined by, first, determining the value of a single Week Worked by dividing the
6 PAGA Payment available for distribution to PAGA Aggrieved Individuals by the total
7 number of Weeks Worked by all PAGA Aggrieved Individuals during the PAGA Period.
Individual Settlement Amounts will be determined by multiplying the value of a single
Week Worked by the number of the total Weeks Worked by each PAGA Aggrieved
Individuals during the PAGA Period.

8 (Exhibit 1 at Section IV, Paragraph 1(b), Page 14).

9 For the purpose of calculating applicable taxes for the payment of the Individual
10 Settlement Amounts paid to Class Participants and PAGA Aggrieved Individuals, 100% of the
11 Individual Settlement Amounts will be paid on a 1099 basis and will not be subject to tax
12 withholding. The Settlement Administrator shall be responsible for issuing and providing
13 Form 1099s to Class Participants and PAGA Aggrieved Individuals for their Individual
14 Settlement Amounts. (Exhibit 1 at Section III, Paragraph 6, Pages 12-13).

15 **4. Funding and Distribution of Settlement Funds**

16 On October 11, 2023, URS remitted \$10,000 by wire transfer to the Settlement
17 Administrator from the Gross Settlement Amount for partial payment of the Settlement
18 Administrator's costs and expenses to administer the Settlement. Within thirty days after the
19 Effective Date, URS will remit the balance of the Gross Settlement Amount to the Settlement
20 Administrator by wire transfer. (*See* Exhibit 1 at Section III, Paragraphs 7-8, Page 13).

21 The "Effective Date" is the date when all of the following events have occurred: (a) the
22 Joint Stipulation has been fully executed; (b) the Court has given preliminary approval to the
23 settlement; (c) notice has been given to the Class Members providing them with an opportunity
24 to opt-out of the settlement; (d) if more than 10% of the Class Members opt-out, URS has elected
25 not to exercise its rights to void the settlement; (e) the Court has held a Final Approval and
26 Fairness Hearing and entered a final order and judgment approving the Joint Stipulation; and (f)
27 the later of the following dates: (i) when the period for filing any appeal, writ, or other appellate
28 proceeding opposing the settlement has elapsed without any appeal, writ, or other appellate

1 proceeding having been filed; or (ii) any appeal, writ, or other appellate proceeding opposing the
2 settlement has been dismissed finally and conclusively with no right to pursue further remedies
3 or relief; or (iii) any appeal, writ, or other appellate proceeding has upheld the Court's final order
4 with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties
5 that the settlement shall not become effective until the Court's order approving the settlement is
6 completely final and there is no further recourse by an appellant or objector who seeks to contest
7 the settlement. (Exhibit 1 at Section I, Paragraph 15, Page 3).

8 The Settlement Administrator shall disburse the payments outlined in the Joint
9 Stipulation, as approved of by the Court, no later than 14 days after receipt of the settlement funds.

10 **5. Uncashed Checks**

11 Funds from uncashed checks will be sent to the California State Controller – Unclaimed
12 Property Division, with the identity of the Class Participant to whom the funds belong. (*See*
13 Exhibit 1 at Section IV, Paragraph 5, Page 16). That allows Class Participants who do not cash
14 their settlement checks to collect their settlement funds at a later date from the California State
15 Controller.

16 **6. Released Claims**

17 **A. Release of Class Claims**

18 The Released Class Claims set forth in the Joint Stipulation are:

19 All claims that were plead in the Second Amended Complaint, including claims for unpaid
20 minimum wages under Cal. Lab. Code §§ 558, 1182.1-1182.3, 1194, 1194.2, 1197, and
21 1198; unpaid meal and rest breaks under Cal. Lab. Code §§ 558, 226.7, and 512, Cal.
22 Code Regs., tit. 8 § 11090, and IWC Wage Order No. 9-2011; failure to reimburse/illegal
23 deductions under Cal. Lab. Code §§ 221 and 2802, and Cal. Regs., tit. 8 § 11090; related
24 claims under California Labor Code §§ 201-3, 226, 204, 210; and claims for unlawful
25 business practices under the California Business and Professions Code §§ 17200, *et seq.*,
26 as alleged in the Second Amended Complaint. The Released Class Claims shall be for the
27 Class Period.

28 (Exhibit 1 at Section I, Paragraph 34, Page 6).

25 **B. Release of PAGA Claims**

26 The Released PAGA Claims set forth in the Joint Stipulation are:

27 All claims asserted in the Operative PAGA letter and/or the Second Amended Complaint,
28 including claims for unpaid minimum wages under Cal. Lab. Code §§ 558, 1182.1-1182.3,

1194, 1194.2, 1197, and 1198; failure to pay wages due for missed meal and rest breaks under Cal. Lab. Code §§ 226.7, and 512; failure to reimburse/illegal deductions under Cal. Lab. Code § 2802; and related claims under California Labor Code §§ 201-203, 204, 210, and 226, 226.3, and 226.8. The Released PAGA Claims shall be for the PAGA Period.

(Exhibit 1 at Section I, Paragraph 35, Page 6).

IV. THE NORTHERN DISTRICT OF CALIFORNIA'S PROCEDURAL GUIDELINES FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

Each of the criteria outlined in the Northern District of California's Procedural Guidelines for Class Action Settlements are addressed herein. Pursuant to this Court's Standing Order for All Civil Cases Before District Judge Jon S. Tigar, each of the respective guidelines are addressed in the order the guidelines are presented on the Northern District of California's website.

The Northern District of California's Procedural Guidelines for Class Action Settlements requests information regarding Class Members' response to the settlement, attorneys' fees, and service awards. The information requested regarding attorneys' fees was provided in Plaintiffs Robert Bejar and Martin Chavez's Motion for Attorneys' Fees and Costs. (ECF No. 122). There are no service awards being sought as part of this settlement.

Accordingly, Plaintiffs only address the Class Members' response to the settlement herein, including information about the number of undeliverable class notices, the number of class members who submitted valid claims, the number of class members who opted out, and the number of class members who objected to or commented on the settlement. Plaintiffs also respond to the objections filed.

1. Class Members' Response

The Court granted preliminary approval of the settlement on September 26, 2023. (ECF No. 98). At that time, Phoenix was appointed by the Court as the Settlement Administrator. After the Court granted preliminary approval, URS sent the Class List³ to Phoenix. (Islas Dec. ¶ 3).

Phoenix conducted a National Change of Address search on the addresses in the Class List to update the addresses as accurately as possible. (Islas Dec. ¶ 4). A search of this database provides updated addresses for any individual who has moved in the previous four (4) years and

³ The "Class List" includes the names, Social Security numbers, last-known addresses, phone numbers, and email addresses, and contract lease and termination dates of Class Members. (See Exhibit 1 at Section I, Paragraph 7, Page 2).

1 notified the U.S. Postal Service of their change of address. (*Id.*). The Class Notice was mailed
2 and emailed to Class Members on November 3, 2023, in English and Spanish.⁴ (Islas Dec. ¶ 5).

3 **A. Number of Undeliverable Class Notices**

4 Nineteen (19) Class Notices were returned to Phoenix. (Islas Dec. ¶ 6). None were
5 returned with a forwarding address. (*Id.*). For the nineteen (19) Class Notices returned from the
6 Post Office without a forwarding address, Phoenix attempted to locate a current mailing address
7 using idiCORE, one of the most comprehensive address databases available for skip tracing. (*Id.*).
8 Of the nineteen (19) Class Notices that were skip traced, fifteen (15) updated addresses were
9 obtained and the Class Notice was promptly re-mailed to those Class Members via first class mail.
10 (*Id.*). Four (4) Class Notices remain undeliverable, because an updated address could not be
11 obtained via skip trace. (Islas Dec. ¶ 7). These four (4) Class Notices represent 1.2% of the Class
12 Members.

13 **B. Number of Class Members Who Submitted Valid Claims**

14 Class Participants do not need to do anything to receive a settlement payment. As such,
15 no claims were submitted by Class Members.

16 **C. Number of Class Members Who Opted Out**

17 Class Members had the option of requesting to be excluded from the settlement. No
18 requests for exclusion were received by Phoenix. (Islas Dec. ¶ 8). Therefore, 100% of the Class
19 Members are participating in the settlement.

20 **D. Number of Class Members Who Objected to the Settlement**

21 Thirty-four (34) identical objections were submitted to the Court,⁵ all raising the same
22 seven arguments as to why they believe the settlement should not be finally approved. (All
23 objectors will hereinafter be collectively be referred to as “Objectors”). Before addressing each

24 ⁴ At preliminary approval, the Parties did not believe a Spanish translation was necessary as all
25 Class Members signed agreements with URS in English. After preliminary approval, Class
26 Counsel determined that some Class Members felt more comfortable with the Spanish language
27 and added a Spanish translation to the administration process before the Class Notices were
28 mailed.

⁵ See ECF Nos. 99, 100, 101, 102, 103, 104, 105, 105, 107, 108, 109, 110, 111, 112, 113, 114,
115, 116, 117, 118, 119, 120, 121, 123, 125, 126, 127, 128, 129, 130, 133, 134, 136, and 138.

1 of those grounds for objecting, there are a few important preliminary considerations that are worth
2 noting about the objections the Court received.

3 First, the overwhelming majority of objections received by the Court appear to be a form
4 that was provided to the prospective objector. Twenty-one (21) of the objections received by the
5 Court show that the prospective objector was prompted on where to provide their contact
6 information. For instance, in each of these twenty-one (21) objections, under “Sincerely,” the
7 prospective objector is prompted on where to place “{Your signature}” and where to “{print your
8 Name}”, “{print your Address}”, “{print your City, State, Zip Code}”, “{print your Email
9 address}”, and “{print your Phone number}.” (*See* ECF Nos. 99, 100, 102, 106, 107, 109, 100,
10 111, 112, 114, 115, 116, 118, 119, 120, 125, 127, 129, 134, 136, and 138). Based on this, it seems
11 clear the objections were, on some level, the product of a campaign to obtain as many objectors
12 as possible by making it as easy as possible on prospective objectors to send the form to the Court.

13 Another fact to note about the objections is the fact that five (5) of the individuals who
14 mailed the objection form to the Court are not Class Members and did not receive a settlement
15 notice.⁶ Thus, these people are objecting to a settlement they have not seen, and which does not
16 concern any of their rights. It is axiomatic that only Class Members can object to the settlement
17 and these objections here from non-Class Members must be rejected. What is most concerning,
18 however, is the fact that these objections were sent to the Court in the first place. These
19 circumstances raise considerable questions over the process of how the objections were procured.

20 Despite the above, the number of objections from individuals with standing to object is
21 heavily outweighed by the overwhelming majority of the Class who approve of the settlement.
22 There are 321 total Class Members here. None have opted out. The total amount of objections
23 received and not withdrawn from Class Members is twenty-eight (28).⁷ Thus, 91% of Class

24
25 ⁶ The following individuals who did not receive Class Notices and who are not Class Members
26 filed objections: Timothy Williams (*See* ECF No. 99, November 8, 2023); Jose Sandoval (*See*
27 ECF No. 106, November 20, 2023); Daniel Rosales (*See* ECF No. 108, November 22, 2013);
James Wade Patrick (*See* ECF No. 133, December 18, 2023); and Trina and Tony Wallace (*See*
ECF No. 127, December 4, 2023).

28 ⁷ David Nigma mailed an objection in (*see* ECF No. 125) and later withdrew it (*see* ECF No.
140).

1 Members approve of the settlement versus 9% of the Class who want to see it set aside. Such a
2 high percentage of those in favor of the settlement “is certainly evidence that the settlement is not
3 unfair or inadequate in the opinion of the class.” *Thomas v. Christopher*, 169 F.R.D. 224, 242-
4 243 (D.D.C. 1996); *see also Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 629 (9th Cir.
5 1982), quoting from *City of Detroit v. Grinnel Corp.*, 495 F.2d 448, 462 (2nd Cir. 1974) (“Any
6 claim by appellants that the settlement offer is grossly and unreasonably inadequate is belied by
7 the fact that, from all appearances, the vast preponderance of the class members willingly
8 approved the offer.”).⁸

9 The expressed will of 91% of the Class should not be overturned by 9% of individuals in
10 a settlement the Court has found to be fair and reasonable, particularly where, as here, the 9%
11 could have protected their individual rights by opting out. *See Torrisi v. Tucson Elec. Power Co.*,
12 8 F.3d 1370, 1378 (9th Cir. 1993) (the concerns of the objectors regarding the settlement could
13 have been addressed in individual lawsuits had the objectors elected to opt out of the Settlement);
14 *Eisen v. Porsche Cars N. Am., Inc.*, 2014 U.S. Dist. LEXIS 14301 *1, *20 (C.D. Cal. Jan. 30,
15 2014) (“Federal courts routinely hold that the opt-out remedy is sufficient to protect class
16 members who are unhappy with the negotiated class action settlement terms.”); *Milligan v.*
17 *Toyota*, 2012 U.S. DIST. LEXIS 116720 *1, *9 (N.D. Cal. Jan. 6, 2012) (overruling multiple
18 objections to a class action settlement, reasoning that the objectors “have the ability to opt-out if
19 they do not like the terms of the settlement”); *see also Marshall v. Holiday Magic*, 550 F.2d 1173,
20 1177 (9th Cir.1977); *Rosado v. Ebay Inc.*, 2016 U.S. Dist. LEXIS 80760 *1, *28-*29 (N.D. Cal.
21 June 20, 2016).

22 Additionally, the objections should be overruled because all the stated bases lack merit
23 for the following reasons.

25 ⁸ *See also EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 892 (7th Cir.1985) (approval over
26 objections of 15% of 253 member class), *cert. denied*, 478 U.S. 1004, 106 S.Ct. 3293, 92 L.Ed.2d
27 709 (1986); *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 803 (3^d Cir.1974), *cert. denied*,
28 419 U.S. 900, 95 S.Ct. 184, 42 L.Ed.2d 146 (1974) (approval over objections of approximately
20% of 452 member class reasoning that “a settlement is not unfair or unreasonable simply
because a large number of class members oppose it”).

1 **E. Response to Objections**

2 *The Objectors' first argument* is that “[t]he gross settlement amount offered does not
3 represent the minimum wages owed to approximately 309 plaintiffs in accordance to defendant’s
4 uniform payment policy of paying approximately 309 plaintiffs 80% of the revenue defendant
5 receives for hauling a load; plus, additional expenses such as insurance, fuel, damages, truck
6 maintenance, pain and suffering.” This claim should be rejected. It asks the Court to set aside the
7 settlement because the settlement amount does not reflect the total amount in minimum wages
8 and expense reimbursements the Class could have received at trial, which does not render a
9 settlement unfair and disregards the nature of compromise settlements embody.⁹

10 Furthermore, each of the Objectors could have opted out of the settlement. Their rights
11 were thus fully protected, and they could have pursued their individual claims had they wished to
12 do so.¹⁰

13 Moreover, the Objectors’ first argument completely ignores the risk of losing should the
14 settlement not be approved. In support of preliminary approval, Plaintiffs plainly explained the
15 multiple and very real risks – and authority substantiating the reality of those risks – of losing on
16

17 ⁹ See *Officers for Justice v. Civil Serv. Com.*, 688 F.2d at 624 (“[T]he very essence of a settlement
18 is compromise, a yielding of absolutes and an abandoning of highest hopes...Naturally, the
19 agreement reached normally embodies a compromise; in exchange for the saving of cost and
20 elimination of risk, the parties each give up something they might have won had they proceeded
21 with litigation...”); *Linney v. Cellular Alaska P’Ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (a
22 proposed settlement may be fair, adequate, and reasonable even though greater recovery might
be available to the class members at trial.); *Perez v. DIRECTV Grp. Holdings, LLC*, 2023 U.S.
Dist. LEXIS 13920 *1 (C.D. Cal. Jan. 23, 2023) (rejecting an objectors claim that the settlement
was inadequate because “the amount that they will receive in settlement is too low to compensate
for the damages they suffered.”).

23 ¹⁰ See *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1378 (9th Cir. 1993) (the concerns of the
24 objectors regarding the settlement could have been addressed in individual lawsuits had the
25 objectors elected to opt out of the Settlement); *Eisen v. Porsche Cars N. Am., Inc.*, 2014 U.S.
Dist. LEXIS 14301 *1, *20 (C.D. Cal. Jan. 30, 2014) (“Federal courts routinely hold that the
26 opt-out remedy is sufficient to protect class members who are unhappy with the negotiated class
27 action settlement terms.; *Milligan v. Toyota*, 2012 U.S. DIST. LEXIS 116720 *1, *9 (N.D. Cal.
28 Jan. 6, 2012) (overruling multiple objections to a class action settlement, reasoning that the
objectors “have the ability to opt-out if they do not like the terms of the settlement”); see also
Marshall v. Holiday Magic, 550 F.2d 1173, 1177 (9th Cir.1977); *Rosado*, 2016 U.S. Dist. LEXIS
at *28-*29.

1 the misclassification issue (which would defeat all claims) or on the reimbursement claims. (*See*
2 Motion for Preliminary Approval, ECF No. 95, Pgs. 9-18). Objectors, on the other hand,
3 completely ignore those very real hurdles to prevailing on the merits and ask this Court to deny
4 settlement approval based solely on their unabated and unsubstantiated optimism of total and
5 complete victory both in the trial court, should the matter proceed to a judgment, and on appeal.

6 As the Court found at preliminary approval, so too should it find now: “the Joint
7 Stipulation, and the obligations of the Parties as set forth therein, is fair, reasonable, and is an
8 adequate settlement of this case and is in the best interests of the Class *in light of the factual,*
9 *legal, practical, and procedural considerations raised by this case.*” (Court’s Order Granting
10 Preliminary Approval of Class Action Settlement, ECF No. 98, pg. 2, lines 23-25)(emphasis
11 added).

12 ***The Objectors’ second argument*** is that “[t]he defendant or class counsel failed to
13 disclose the revenue information (OVISS information) that the defendant received for hauling a
14 load to substantiate the amount owed to approximately 309 plaintiffs in accordance to the uniform
15 payment policy, which does not substantiate the gross settlement amount.” This claim has no
16 merit and does not impact the reasonableness of the settlement.

17 The Objectors’ second argument is based on a claim that URS breached its contract with
18 Class Members. But that claim has not been pled in this lawsuit and is not being released here.¹¹

19 While this claim is not relevant to the settlement at hand, it is worth noting that to the
20 extent this argument is referring to a claim that URS failed to pay Class Members the 80% of the
21 “Transport Revenue” it was contractually obligated to pay drivers, it seems to stem from a flawed
22 premise that Class Members were entitled to 80% of the revenue URS received from customers.
23 However, in each of the Independent Contractor Service Agreements applicable during the class
24 period, URS did not agree to pay drivers 80% of the revenue they received from customers.

25
26
27 ¹¹ As the Court’s Order Granting Preliminary Approval noted, “[t]he Joint Stipulation provides
28 for the following release as to Class Participants, which is hereby approved conditionally: All
claims that were plead in the Second Amended Complaint...” (*See* ECF No. 98, Pg. 3, lines 16-
18).

1 Rather, in each of the Independent Contractor Service Agreements Class Members signed
2 during the class period, URS agreed to pay Class Members 80% of the “Transport Revenue,”
3 which was defined in the agreements as the amount charged by the Carrier (URS Midwest, Inc.)
4 for the transportation of cargo “less amounts related to fuel price fluctuations; toll adjustments;
5 logistics fees; expediting; and any payments to third parties, such as brokers, which may vary
6 from time to time.” (Exhibit 2 attached to the Mara Dec., Exemplar of an Independent Contractor
7 Service Agreement at Paragraph 3(a)). These agreements therefore anticipate that Class Members
8 will receive less than 80% of the revenue received from customers in amounts that will vary.
9 Thus, even if Class Members received less than 80% of what URS received from customers for
10 the loads hauled, such would not evidence that Class Members were paid less than they were
11 contractually entitled to receive.

12 The Court should also reject *the Objectors’ third reason for objecting*: that the motion
13 for preliminary approval purportedly did not provide how the Parties reached the Settlement. The
14 motion for preliminary approval explains the procedural history of the case, as well as the history
15 of the negotiations that led to settlement. (See Motion for Preliminary Approval of Class Action
16 Settlement, ECF No. 95, Pgs. 3-5). The motion further explains why the settlement is fair,
17 adequate, and reasonable, and not a product of collusion. (See Motion for Preliminary Approval
18 of Class Action Settlement, ECF No. 95, Pgs. 5, 9-23). The motion for final approval further
19 addresses these issues. (See Section V, below). Accordingly, Plaintiffs Bejar and Chavez have
20 met their obligations under the applicable caselaw. See *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
21 1026 (9th Cir. 1998); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

22 *The Objectors’ fourth reason* for why the settlement should be rejected is that “Class
23 Counsel failed to provide all of the documentation in the Joint Stipulation of settlement;
24 specifically, Exhibit I which is not in the best interest of the class.” There is no “Exhibit I” to the
25 Joint Stipulation. There is an Exhibit 1, which was attached to the Joint Stipulation that was filed
26 with the Court in support of the motion for preliminary approval. (See Exhibit 1 to the Declaration
27 of David Mara, Esq., in Support of Motion for Preliminary Approval of Class Action Settlement,
28 ECF No. 95-1, Pgs. 64 to 74). Thus, Objector’s argument here has no merit.

1 **Objectors’ fifth ground for objection** complains that the settlement is not in the best
2 interests of the Class Members because Denson Sales and Andre Clemons did not agree to the
3 amendment of the complaint to add Robert Bejar and Martin Chavez as class representatives. This
4 argument fails to show that the settlement is unfair and unreasonable and should be rejected. That
5 Robert Bejar and Martin Chavez were added to the complaint as additional class representatives
6 does not render the settlement unfair and unreasonable. If anything, the stipulation and Order to
7 add them as class representatives has proven the opposite. In signing the settlement agreement,
8 representatives Bejar and Chavez have proven their interests are aligned with the 91% of the Class
9 Members who also support the settlement.

10 **Objectors’ final grounds for objecting (the sixth and seventh)** claim that the settlement
11 is not in the best interests of the Class because it was entered into without the support of a majority
12 of Class Members or all class representatives. First, the claim that a majority of Class Members
13 have not agreed to the settlement is demonstrably false. As the settlement administration has
14 proven, no Class Members have opted out and 91% of the Class approves of the settlement. Thus,
15 far from a majority of Class Members not approving the settlement, the overwhelming majority
16 of Class Members are in favor of it.

17 In addition, Objectors are wrong that Plaintiffs Bejar and Chavez required the unanimous
18 consent of all class representatives before they could sign off on the settlement agreement. Courts
19 have ruled that “agreement of the named plaintiffs is not essential to approval of a settlement
20 which the trial court finds to be fair and reasonable.” *Parker v. Anderson*, 667 F.2d 1204, 1211
21 (5th Cir. 1982); *see also Charron v. Wiener*, 731 F.3d 241, 254 (2d Cir. 2013) (Finding “the assent
22 of class representatives is not essential to the settlement, as long as the Rule 23 requirements are
23 met.”).¹² As the Fifth Circuit noted in *Parker*, “[t]he rationale implicit in these decisions is sound:

24
25 ¹² *Charron* cites the following cases in support of this rule: *Elliott v. Sperry Rand Corp.*, 680 F.2d
26 1225, 1226, 1228 (8th Cir.1982); *Kincade v. Gen.Tire & Rubber Co.*, 635 F.2d 501, 508 (5th
27 Cir.1981) (“[T]he assent of named plaintiffs is not a prerequisite to the approval of a settlement.”
28 (internal quotation marks omitted)); *Laskey v. Int’l Union*, 638 F.2d 954, 956-957 (6th Cir.1981)
 (“Class counsel is supposed to represent the class, not the named parties: that the named parties

1 the named plaintiffs should not be permitted to hold the absentee class hostage by refusing to
2 assent to an otherwise fair and adequate settlement in order to secure their individual demands.”
3 *Id.*; see also *Rodriguez v. West Publ’g Corp.*, 2007 U.S. Dist. LEXIS 74849 *1, *49 (C.D. Cal.
4 August 10, 2007) (rejecting “arguments by four Objectors or groups of Objectors that the
5 Settlement should not be approved because the Objecting Plaintiffs object to the terms of the
6 Settlement.”).

7 For the foregoing reasons, the Court is respectfully requested to overrule the objections
8 and grant final approval of the settlement.

9 **F. Class Members Who Disputed Their Workweeks or Requested to**
10 **be Added to the Settlement**

11 Phoenix received fourteen (14) workweek disputes from Class Members. (Islas Dec. ¶
12 10). These workweek disputes were accepted by Phoenix. (*Id.*). Two (2) additional individuals
13 requested to be added to the Class. (Islas Dec. ¶ 11). These two added individuals increased the
14 number of Class Members from 319 to 321.

15 **2. Settlement Agreement Signatories**

16 In the Court’s preliminary approval order, the Court states that the “motion for final
17 approval shall also address why fewer than all of the named plaintiffs executed the settlement
18 agreement.” (Court’s Order Granting Preliminary Approval of Class Action Settlement, ECF No.
19 98, ¶ 17). Two of the named plaintiffs, Denson M. Sales and Andre Clemons, did not agree with
20 the settlement for the reasons stated in their objections. For the reasons discussed above, these
21 objections do not render the settlement unreasonable and inadequate. Furthermore, as courts have

22 _____
23 objected does not prove the settlement was unfair or that the class counsel acted improperly.”);
24 *Flinn v. FMC Corp.*, 528 F.2d 1169, 1174 n. 19 (4th Cir.1975) (“Appellants do not argue, nor
25 may they under the authorities, that assent of the class Plaintiffs is essential to the settlement,
26 provided the trial court finds it fair and reasonable.”); *Pettway v. American Cast Iron Pipe Co.*,
27 576 F.2d 1157, 1216 (5th Cir.1978), *cert. denied*, 439 U.S. 1115, 99 S.Ct. 1020, 59 L.Ed.2d 74
28 (1979) (“To be sure, the assent of named Plaintiffs is not a prerequisite to court approval.”);
Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 855 F.Supp. 825 (E.D.N.C.1994)
(approval over objections of majority of named Plaintiffs).

1 noted, the assent of all class representatives is not necessary to finding a class settlement is fair,
2 reasonable, and in the best interests of the class. *Parker*, 667 F.2d at 1211; *Charron*, 731 F.3d at
3 254; *Rodriguez*, 2007 U.S. Dist. LEXIS 74849 at *49; *see also* fn 12, above.

4 **V. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR FINAL** 5 **APPROVAL**

6 Matters that have been filed as class actions require court approval before a settlement can
7 be consummated. *See* Fed. R. Civ. Proc. (“FRCP”) 23(e). FRCP 23(e) provides that any
8 compromise of a class action must receive Court approval. The Court has broad discretion to
9 grant approval and should do so where the proposed settlement is “fair, adequate, reasonable, and
10 not a product of collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *Joel*
11 *A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000). In determining whether a settlement should be
12 approved, the Ninth Circuit has a “strong judicial policy that favors settlements, particularly
13 where complex class action litigation is concerned.” *In re Heritage Bond Litigation*, 2005 U.S.
14 Dist. LEXIS 13555, *9 (C.D. Cal. June 10, 2005) (*citing Class Plaintiffs v. Seattle*, 955 F.2d
15 1268, 1276 (9th Cir. 1992)).

16 Approval of a class action settlement involves a two-step process. In determining whether
17 to grant final approval of the settlement, a court examines the terms for overall fairness and, in so
18 doing, balances the following factors: the strength of the plaintiff’s case; the risk, expense,
19 complexity and likely duration of further litigation; the risk of maintaining class action status
20 throughout the trial; the amount offered in settlement; the extent of discovery completed; the stage
21 of the proceedings; the experience and views of counsel; the presence of a governmental
22 participant; and, the reaction of the class members to the proposed settlement. *Hanlon*, 150 F.3d
23 at 1026.

24 Here, the proposed settlement was reached after undertaking a robust factual and legal
25 investigation into the claims and defenses in this lawsuit. This robust factual and legal
26 investigation led to Plaintiffs filing a motion for class certification and the Court granting this
27 motion. It was only after significant post-certification discovery was conducted that the Parties
28 reached an agreement to settle. The settlement amount takes into consideration the risks of

1 Plaintiffs’ prevailing on the employment relationship, the risks on the merits of Plaintiffs’
2 underlying claims, and the risks in maintaining class certification through trial. In light of these
3 risks, the settlement amount is well within the ballpark of reasonableness.

4 **1. The Settlement was a Result of Arm’s-Length Negotiations**

5 The Ninth Circuit has shown longstanding support of settlements reached through arm’s
6 length negotiation by capable opponents. In *Rodriguez v. West Publishing Corp.*, 563 F.3d 948
7 (9th Cir. 2009), the Ninth Circuit expressly opined that courts should defer to the “private
8 consensual decision of the [settling] parties.” *Id.* at 965, citing *Hanlon*, 150 F.3d at 1027. Here,
9 the proposed settlement is the product of arm’s-length negotiations facilitated by Mr. Ross, one
10 of the most respected mediators in wage and hour class actions. This settlement was reached with
11 the assistance of Mr. Ross after arms-length bargaining by the Parties at a formal mediation
12 scheduled on November 4, 2021, and extensive subsequent conversations.

13 **2. *In re Bluetooth* Factors are not Present Here**

14 In *Bluetooth*, the Ninth Circuit articulated additional factors that need to be considered. *In*
15 *re Bluetooth Headset Products Liability Litigation* (“*Bluetooth*”), 654 F.3d 935, 946 (9th Cir.
16 2011). The *Bluetooth* factors are met here.

17 The three signs *Bluetooth* instructs trial courts to look for are:

- 18 1. When class counsel receives a disproportionate distribution of the settlement, or when
- 19 the class receives no monetary distribution but counsel is amply rewarded;
- 20 2. When the parties negotiate a ‘clear sailing’ arrangement providing for the payment of
- 21 attorney’s fees separate and apart from class funds without objection by defendant;
- 22 3. When the parties arrange for fees not awarded to revert to defendants rather than be
- 23 added to the class fund.

24 *Id.* at 947.

25 This settlement passes the *Bluetooth* test. The NSA is over two and a half times larger
26 than the fees requested by Class Counsel, which is the accepted federal benchmark of 25% of the
27 GSA. Additionally, any amount requested by Class Counsel and not awarded by the Court shall
28 become part of the NSA and distributed to Class Participants. (*See* Exhibit 1 at Section III,
Paragraph 2, Page 11). There is also no “clear sailing” provision for attorneys’ fees in the Joint

1 Stipulation. (*Id.*). Accordingly, unlike the settlement agreement in *Bluetooth*, the instant
2 settlement cannot be said to arouse suspicion of collusion.

3 **3. The Settlement is Fair**

4 When evaluating the settlement terms for purposes of ruling on whether to finally approve
5 it, the Court is to review the strength of a plaintiff’s case, including “the probable outcome of a
6 trial on the merits of liability and damages as to the claims, issues, or defenses of the class and
7 individual class members.” *Van Ba Ma v. Covidien Holding, Inc.*, 2014 U.S. Dist. LEXIS 76359,
8 *6-7 (C.D. Cal. 2014) (*citing Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173 (9th Cir. 1977)). In
9 ruling on final approval, the “fairness hearing is not to be turned into a trial or a rehearsal for trial
10 on the merits.” *Id.* (*quoting Officers for Justice v. Civil Serv. Comm’n of the City and Cnty. of*
11 *San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)).

12 There is no standard or benchmark for determining whether a settlement is fair.
13 “Ultimately the district court’s determination is nothing more than ‘an amalgam of delicate
14 balancing, gross approximations and rough justice.’” *Officers for Justice v. Civil Service Comm.*
15 *of City and County of San Francisco*, 688 F. 2d 615, 625 (9th Cir. 1982). A court should weigh
16 the benefits that the settlement will realize for the class against the uncertainty of litigation and
17 the possibility that the class members would obtain no relief in the absence of a settlement. *See*
18 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“...it is the very uncertainty
19 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
20 settlements.”); *see also Hanlon*, 150 F.3d at 1026 (when considering the fairness of a proposed
21 class settlement, courts consider the strength of a plaintiff’s case against the risk, expense,
22 complexity and likely duration of further litigation.).

23 **A. All of Plaintiffs’ Claims Revolve Around Whether They were** 24 **Misclassified as Independent Contractors**

25 **i. Employment Status**

26 Plaintiffs, and the certified Class, are truck drivers who contracted with and drove for URS
27 during the Class Period. Each of the Class Members was classified by URS as an independent
28 contractor. The core question in the case is whether URS correctly classified the drivers as

1 independent contractors. Plaintiffs assert that URS's classification was in error, and that the
2 drivers were URS's employees under California law. As such, all the claims alleged in this matter
3 are based on URS's failure to classify Class Members as employees. Put differently, if Plaintiffs
4 lose on this single issue, they will take nothing from this matter. (Mara Dec. ¶ 19).

5 In its Order Granting Plaintiffs' Motion for Class Certification, the Court indicated that
6 the multi-factored, "right-to-control" employment test articulated by the California Supreme
7 Court in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* ("*Borello*") 48 Cal.3d
8 341 (1989) would control the outcome of whether the class were employees or independent
9 contractors. (See ECF No. 53 at fn 4 ("Because none of Plaintiffs' claims are grounded in the
10 state wage orders, the ABC Test does not apply to their claims and the Court does not evaluate
11 the predominance question under the ABC test.")). (Mara Dec. ¶ 20).

12 Based on deposition testimony and documents produced in this matter, Plaintiffs contend
13 that URS substantially controls Class Members, and that Plaintiffs would be able to provide
14 evidence to meet the factors delineated in the *Borello* employment test to show that Class
15 Members should have been classified as employees. URS vehemently denies these contentions.
16 (Mara Dec. ¶ 21).

17 **ii. Plaintiffs' Underlying Claims**

18 Plaintiffs assert that URS misclassified Class Members as independent contractors, and,
19 therefore, that Class Members were entitled to protections under the California Labor Code that
20 they were not afforded while working with URS. For example, under the contracts Class Members
21 signed with URS, Class Members were responsible for paying business expenses such as fuel,
22 maintenance, and insurance, that they would not have been responsible for if they were
23 employees. In addition, they had to use their personal cell phones in the performance of their
24 work duties. Under California Labor Code § 2802, employees must be reimbursed for necessary
25 business expenses. Plaintiffs contend that Class Members should have been classified as
26 employees and, thus, should have been reimbursed for these business expenses. (Mara Dec. ¶ 22).

27 Plaintiffs also assert that due to their alleged misclassification, they were not provided
28 with meal periods, rest periods, itemized wage statements and waiting time penalties that were

1 owed to them under California law. Plaintiffs further assert that the contracts they operated under
2 only paid them for the time they were driving and did not pay them for the time they were
3 performing non-driving tasks such as pre-trip and post-trip inspections. (Mara Dec. ¶ 23).

4 **iii. The Claims Faced Many Formidable Obstacles that, if not**
5 **Overcome, Would Result in the Class Taking Nothing or Very**
6 **Little**

7 **1. Establishing the Employment Relationship**

8 Class Members can only recover if they are successful in showing URS misclassified them
9 as independent contractors, rather than employees. In other words, Class Members must show
10 they were employees to recover anything. If they fail to show that threshold issue, no matter how
11 strong their claims are against URS, the Class will recover nothing. Thus, any risk analysis
12 associated with the claims must start foundationally with the existing dangers that could prevent
13 the Class Members from proving they are employees, rather than independent contractors. (Mara
14 Dec. ¶ 24).

15 The test that will determine whether the Class of drivers are employees of URS is the
16 right-to-control test articulated by the California Supreme Court, in *Borello*. To be employees
17 under that test, URS must be found to possess “the right to control the manner and means of
18 accomplishing the result desired.” *Ayala v. Antelope Valley Newspapers, Inc.* 59 Cal.4th 522, 532
19 (2014). Courts also must look at secondary factors under the *Borello* test in the determination of
20 whether the Class of drivers are employees. These secondary factors include:

21 (a) whether the one performing services is engaged in a distinct occupation or
22 business; (b) the kind of occupation, with reference to whether, in the locality, the
23 work is usually done under the direction of the principal or by a specialist without
24 supervision; (c) the skill required in the particular occupation; (d) whether the
25 principal or the worker supplies the instrumentalities, tools, and the place of work for
26 the person doing the work; (e) the length of time for which the services are to be
27 performed; (f) the method of payment, whether by the time or by the job; (g) whether
28 or not the work is a part of the regular business of the principal; and (h) whether or
not the parties believe they are creating the relationship of employer-employee.

Borello, 48 Cal. 3d at 351. (Mara Dec. ¶ 25).

26 Under the facts, Plaintiffs believe URS controls nearly every aspect of their work of
27 hauling cars and, at a minimum, “retains all *necessary* control” over the drivers. *Borello*, 48
28 Cal.3d at 357 (emphasis in original). For instance, through the contracts, referred to as

1 Independent Contractor Service Agreements (“ICSAs”), URS requires drivers to “full comply
2 with all operating procedures of [URS] and all reasonable specifications of the shipper,” maintain
3 equipment up to URS’s standards and in accordance with URS’s inspection program, and report
4 to dispatch at various points during hauls. (Mara Dec. ¶ 26).

5 Despite this confidence, two very real obstacles stand in the way of the Class successfully
6 being found to be employees. One, the Ninth Circuit, in *Bowerman v. Field Asset Services, Inc.*,
7 60 F.4th 459 (9th Cir. 2023)¹³, recently issued a ruling that made it substantially more difficult to
8 be found an employee under *Borello*. Two, an employment relationship cannot be established on
9 the basis of mandates and policies that are implemented to comply with federal regulations. (Mara
10 Dec. ¶ 27).

11 In *Bowerman*, the Ninth Circuit reversed the district court’s finding that class members
12 were employees. Although the district court held that “[n]o reasonable juror could review the
13 Vendor Packets, the work orders, the trainings, the Vendor Profiles, the discipline, and the Vendor
14 scorecards, and conclude [that] any of the Vendors are independent contractors[.]”¹⁴ the Ninth
15 Circuit rejected that holding, arguing that not all controls are treated equally under the *Borello*
16 test.

17 Specifically, the Ninth Circuit reasoned that “if control may be exercised only as to the
18 result of the work and not the means by which it is accomplished, an independent contractor
19 relationship is established.” *Bowerman*, 60 F.4th at 474. The Ninth Circuit found that all the facts
20 on which the *Bowerman* plaintiffs relied to establish an employment relationship under *Borello*
21 could reasonably be interpreted as controlling the results of the work. *Id.* at 474-476. The Ninth
22 Circuit also found that many of *Borello*’s secondary factors “tip in favor of independent contractor
23 status.” *Id.* at 476. Specifically, the Ninth Circuit ruled that “the parties intent to create an
24 independent contractor relationship, the class members’ opportunity for profit or loss, the class
25 members’ employment of assistants” tended to show an independent contractor relationship. *Id.*

26
27 ¹³ This opinion was initially issued on July 5, 2022 at 39 F.4th 652. Rehearing *En Banc* was
28 requested and denied. The reviewing Panel, however, ordered the decision amended. Thus, the
2023 decision as cited above is the amended version of the original decision.

¹⁴ *Bowerman*, 60 F.4th at 466.

1 (Mara Dec. ¶ 28).

2 Under *Bowerman*, this Court or a jury could find that many of the controls Plaintiffs rely
3 on go to controlling the results of the timely delivery of cars for URS' customers. Additionally,
4 like *Bowerman*, URS drivers have the ability to hire assistants to perform their work under the
5 ICSA. Indeed, one of the named class representatives in this matter hired numerous drivers to
6 perform work under his ICSAs with URS. Thus, like *Bowerman*, this Court or jury could find that
7 this "tips in favor of" an independent contractor relationship. (Mara Dec. ¶ 29).

8 Although counsel for Plaintiffs believe *Bowerman* is at odds with other Ninth Circuit cases
9 and is distinguishable on certain grounds, it remains binding precedent and counsel does not know
10 how this Court or a jury will apply *Bowerman*. In addition, even if this Court were to rule in
11 Plaintiffs' favor and find for employment status, like the district court in *Bowerman*, that decision
12 could be similarly overturned by the Appeals Court. The danger of losing on this issue cannot be
13 understated. If the employment status issue is lost, the Class takes nothing. (Mara Dec. ¶ 30).

14 Even if Plaintiffs prevail over *Bowerman*, "[a] putative employer does not exercise any
15 degree of control merely by imposing requirements mandated by government regulation." *Linton*
16 *v. DeSoto Cab Co., Inc.* 15 Cal. App. 5th 1208, 1223 (2017). The contractual relationship between
17 URS and the Class Members is governed by the federal motor carrier leasing regulations, which
18 set forth the requirements for a written lease between the owners/lessors of motor vehicle
19 equipment (in this case, the Class Members) and the lessees of that equipment (in this case, URS).
20 (Mara Dec. ¶ 31).

21 Accordingly, URS asserts that any policies it has that cover independent contractors are
22 in place to meet these requirements. Significantly, one of these requirements is found in 49 C.F.R.
23 § 385.5. Under 49 C.F.R. § 385.5, "[t]o meet the safety fitness standard, the motor carrier
24 must demonstrate it has adequate safety management controls in place, which function
25 effectively to ensure acceptable compliance with applicable safety requirements[.]"
26 (Emphasis added). URS argues that the policies Plaintiffs rely on to establish an employment
27 relationship are in place to meet this broad regulation. Put differently, if the policies and practices
28 Plaintiffs rely on as supporting an employment relationship are found to be an offshoot of URS's

1 federal mandate that it maintain “adequate safety management controls,” they cannot establish an
2 employment relationship and the Class would take nothing. (Mara Dec. ¶ 32).

3 Although Counsel for Plaintiffs believes that URS’ policies and rights to control go
4 beyond simply trying to comply with federal safety mandates or other federal regulations, some
5 of the “control” facts are safety-oriented, such as accident reporting, maintaining the equipment
6 according to URS’ specifications, and load securement. With the potential exclusion of some,
7 many, or all facts related to URS’ control from the employment question under *Borello*, the
8 probability of losing on the employment issue increases. Given that a loss on that issue would
9 result in the Class taking nothing from this action, considerable weight had to be given to it in
10 evaluating settlement. (Mara Dec. ¶ 33).

11 **2. Risks on the Merits of Plaintiffs’ Underlying Claims**

12 Although prevailing on the employment issue is a necessary predicate to obtaining any
13 money here, success on the issue does not guarantee the Class will recover anything. It just gets
14 them to the next step: showing URS violated Labor Code section 2802 by failing to reimburse
15 Class Members for costs such as insurance, fuel, maintenance, and damage claims and violated
16 California’s minimum wage laws. As the following shows, many real and considerable obstacles
17 threaten the success of these underlying claims. (Mara Dec. ¶ 34).

18 **a. The Claims Under California Labor Code §** 19 **2802 Faced Real and Considerable Risks**

20 **i. Three out of Five Cases that have Ruled** 21 **on the Issue in the Ninth Circuit and** 22 **California Have Found that Labor Code** **§ 2802 is Preempted by the Truth-in-** **Leasing Regulations for all but Cell** **Phone Reimbursements**

23 URS has indicated that it intends to file a motion for summary judgment of Plaintiffs’
24 Business Expense Reimbursement claims under Labor Code § 2802 on the grounds that the claims
25 are preempted under the federal Truth-in-Leasing regulations. Specifically, URS was going to
26 argue that all but Plaintiffs’ claims for cell phone reimbursements are preempted and must be
27 dismissed. If successful, this argument would have absolutely gutted the value of the most
28 substantial claims in this case. Despite firmly believing the claims are not preempted, Plaintiffs

1 must deal with the unfortunate and very real fact that three out of five cases in the ninth circuit
2 and California to deal with the issue have found in favor of preemption. (Mara Dec. ¶ 35).

3 For example, in *Valdez v. CSX Intermodal Terminals, Inc.*, the Northern District of
4 California found that expenses associated with acquiring and/or maintaining vehicles, fuel,
5 maintenance, insurance, and cargo and property damage are preempted under the federal Truth-
6 in-Leasing regulations:

7 Defendant contends that Plaintiffs' Section 2802 reimbursement claims are preempted
8 by 49 C.F.R. Section 376.12(d), (e), (i), and (j). Defendant is largely correct. Plaintiffs
9 cannot seek reimbursement for the expenses associated with acquiring and/or maintaining
10 vehicles because these claims are preempted by 49 C.F.R. Sections 376.12(c)(1) and (d),
which expressly contemplate that carriers and drivers will enter leases whereby the drivers
provide their vehicles to the carriers. . . .

11 In addition, Plaintiffs cannot seek reimbursement for fuel and maintenance because these
12 claims are preempted by 49 C.F.R. Section 376.12(e), which expressly permits carriers
and drivers to enter leases that allocate these expenses to the drivers. . . . Similarly,
13 Plaintiffs' claims for insurance reimbursements are preempted by 49 C.F.R. Section
376.12(j)(1). . . .

14 Plaintiffs' claim for cargo and property damage is preempted by 49 C.F.R. Section
15 376.12(j)(3), which permits leases to specify conditions under which deductions for such
16 damage may be made from the driver's settlements. Plaintiffs' claim for escrow funds is
preempted by 49 C.F.R. Section 376.12(k), which permits leases to provide for escrow
funds.

17 *Valdez v. CSX Intermodal Terminals, Inc.*, 15-cv-05433, 2017 U.S. Dist. LEXIS 66923 *1, *25-
18 *26 (N.D. Cal. April 10, 2017). The only expenses that *Valdez* found not to be preempted were
19 expenses for drivers' use of their personal cell phones. *Id.* at *26-*27.

20 As the Northern District did in *Valdez*, the Central District of California found preemption
21 in *Salter v. Quality Carriers*, 20-cv-479, 2021 U.S. Dist. LEXIS 213111 *1, *34-*35 (C.D. Cal.
22 Oct. 27, 2021) ([B]ecause the [Truth-in-Leasing] regulations expressly provide the parties the
23 freedom to contract to allocate certain operational costs to contractors and to deduct those costs
24 from the contractors' compensation, the Court concludes that Plaintiff's claim for unreimbursed
25 business expenses under California Labor Code § 2802 and allegedly illegal deductions
26 under California Labor Code § 221 are preempted."). Also, in the California Court of Appeal in
27 *Rodriguez v. RWA Trucking Co., Inc.*, 238 Cal.App.4th 1375, 1393 (2013), found that insurance
28

1 expenses were preempted.¹⁵

2 Only two Ninth Circuit District Courts have ruled against preemption - *Goyal v. CSX*
3 *Intermodal Terminals, Inc.*, 17-cv-06081, 2018 U.S. Dist. LEXIS 164643 *1 (N.D. Cal. Sept. 25,
4 2018) and *Henry v. Cent. Freight Lines, Inc.*, 2019 U.S. Dist. LEXIS 99594 *1, *15 (E.D. Cal.
5 June 13, 2019). Plaintiffs contend that the reasoning in *Goyal* is more persuasive than the cases
6 relied upon by URS. However, given the fact that a majority of courts faced with the issue have
7 ruled against the Plaintiffs' interest, a considerable amount of weight had to be given to the
8 prospect that Plaintiffs here would similarly succumb to a preemption argument on their most
9 valuable expense reimbursement claims. (Mara Dec. ¶ 36).

10 **ii. URS Argues that It Pays Class Members**
11 **an Enhanced Compensation to Cover**
12 **Business Expenses**

13 Alternatively, URS argues that it pays Class Members enhanced compensation to cover
14 business expenses. URS relies on the case *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th
15 554 (2017). (Mara Dec. ¶ 37). In *Gattuso*, the California Supreme Court held that an employer
16 may satisfy its obligation under California Labor Code § 2802 by paying employees enhanced
17 compensation in the form of increases in base pay or commission rates. In doing so, an employer
18 must show two things: (1) the employer must establish "some method or means to apportion the
19 enhanced compensation to identify what portion is intended as expense reimbursement," and (2)
20 it must show the identified reimbursement amounts are enough to cover expenses incurred. *Id.* at
21 575. URS argues that it pays Class Members an enhanced compensation and that it details on
22 settlement sheets the amounts for compensation and the amounts of expenses.

23 Plaintiffs disagree that URS pays Class Members an enhanced compensation and rely on
24 *Espejo v. The Copley Press, Inc.*, 13 Cal. App. 5th 329, 367 (2017). Plaintiffs argue that URS'
25 compensation is not the same as in *Gattuso* because URS deducts amounts for costs before they
26 pay the compensation and there is no way for drivers to identify what amount is being paid for

27 ¹⁵ See also *Remington v. J.B. Hunt Transp., Inc.*, 15-cv-100100, 2016 U.S. Dist. LEXIS 126487
28 *1, *5 (D. Mass Sept. 16, 2016) (finding that that Truth-in-Leasing regulations preempted the
plaintiffs' complaint alleging improper deductions).

1 labor performed and the amount being paid as reimbursement for business expenses. *See Id.* at
2 366-367. (Mara Dec. ¶ 38). However, there is a very real risk that the Court would agree with
3 URS on this issue.

4 Again, if Plaintiffs had lost on this issue, their most valuable claim would have been
5 gutted. (Mara Dec. ¶ 39).

6 **b. If the ICSAs can be Read to Compensate for**
7 **All Transportation-Related Services, They**
8 **Will Compensate for Driving and Non-Driving**
and Plaintiffs' Claims for Minimum Wage
Violations Would Fail

9 Plaintiffs claim the ICSAs fail to pay for non-driving time and only pay for the actual
10 hauling of cars. Thus, Plaintiffs argue that when they are not driving, the ICSAs pay them nothing,
11 which violates California's minimum wage laws. Whether any compensation is owed to
12 employees is a matter determined primarily by contract, which, here, would be the ICSAs. *Oman*
13 *v. Delta Airlines, Inc.* 9 Cal.5th 762, 782. (Mara Dec. ¶ 40).

14 In opposing this claim, URS relies on *Salter v. Quality Carriers*, 20-cv-479, 2021 U.S.
15 Dist. LEXIS 213111 *1 (C.D. Cal. Oct. 27, 2021). In *Salter*, the Central District of California
16 granted summary judgment in the employer's favor of the plaintiff's cause of action for failure to
17 pay minimum wage. *Id.* at *30-*32. There, the parties entered into an agreement that outlined the
18 compensation to be paid. The agreement set forth compensation that the plaintiff would receive
19 for services which were defined to include "transport, load, unload, and perform other
20 transportation-related services." *Id.* at *30. The plaintiff earned an adjusted gross revenue for each
21 load tendered to him. *Id.* The *Salter* court found that the plaintiff understood that his compensation
22 pursuant to the parties' agreement "was for 'transportation-related services,' which included tasks
23 beyond merely driving his truck from one location to another." *Id.* at *32. (Mara Dec. ¶ 41).

24 Here, if the ICSAs can be read to compensate for transportation related services, then, as
25 in *Salter*, they would compensate for all tasks, including non-driving time, associated with
26 transporting. Therefore, considerable deference had to be paid to the fact this Court or a jury could
27 find the ICSAs did not contemplate compensation of specific acts – i.e., driving – but paid for
28

everything, which would result in Class Members taking nothing for their minimum wage claims. (Mara Dec. ¶ 42).

c. The Ninth Circuit has Ruled the FMCSA Decision and Order Preempts the Enforcement of California Meal and Rest Period Claims – a Conclusion this Court Applied Earlier in this Case in Dismissing Meal and Rest Period Claims

Early in the case, this Court granted URS’ motion to dismiss Plaintiffs Sales’ and Clemons’ claims for meal and rest periods with prejudice pursuant to the FMCSA’s December 28, 2018, Decision and Order. In that Decision and Order, the FMCSA ordered that California’s meal and rest period claims were preempted. The Ninth Circuit ruled that the agency did not exceed its authority in issuing the decision. *Int’l Bhd. Of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Administration*, 986 F.3d 841, 846 (9th Cir. 2021). (“Because the agency’s decision reflects a permissible interpretation of the Motor Carrier Safety Act of 1984 and is not arbitrary or capricious, we deny the petitions for review.”). (Mara Dec. ¶ 43).

The Ninth Circuit, however, left open the question of whether that Decision and Order of the FMCSA could apply to claims retroactive to its issuance date of December 28, 2018. The Ninth Circuit subsequently answered that question in the affirmative, in *Valiente v. Swift Transportation Co. of Arizona, LLC*, 54 F.4th 581, 587 (9th Cir. 2022). (Finding “Congress and the FMCSA have spoken with a clear voice in prohibiting enforcement of California’s MRB rules[, and] [a]llowing Plaintiffs to move forward with their claims would require this Court to act in opposition to that decree.”). Thus, the meal and rest period claims are not part of the class certification order here and the only potential value of meal and rest period claims lies in the remote and totally unknowable prospect that the agency may reverse course at some point. There is no evidence the agency is going to change its opinion. (Mara Dec. ¶ 44).

3. Risks to Plaintiffs’ Wage Statement and Waiting Time Penalties Claims

As to the waiting time penalties claims, URS argues that Plaintiffs would not be able to prove that URS “willfully” failed to pay Class Members the appropriate wages due upon separation of employment. “A willful failure to pay wages within the meaning of Labor Code

1 Section 203 occurs when an employer intentionally fails to pay wages to an employee when those
2 wages are due. However, a good faith dispute that any wages are due will preclude imposition of
3 waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 § 13520. “A ‘good faith dispute’
4 that any wages are due occurs when an employer presents a defense, based in law or fact, which
5 would preclude any recovery on the part of the employee. The fact that a defense is ultimately
6 unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.* (Mara Dec. ¶ 45).

7 URS contends that any failure to pay wages due at the separate of employment was not
8 willful. URS argues that it would not be liable for waiting time penalties because a “good faith
9 dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v.*
10 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. ¶ 46).

11 As to Plaintiffs’ wage statement claim, URS asserts that any violation of California Labor
12 Code § 226 was not “knowing and intentional.” *See* Cal. Lab. Code § 226(e) (“An employee
13 suffering injury as a result of a **knowing and intentional** failure by an employer” may recover
14 damages”) (emphasis added); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1195 (2008)
15 (“Some statutory penalties are imposed only if an employers’ violation was ‘willful’ or
16 ‘knowing.’ . . . [S]ection 226, subdivision (e) penalizes an employer’s ‘knowing and intentional’
17 failure to provide itemized wage statements under section 226, subdivision (a)[.]”). URS also
18 contends that employees cannot show that they have suffered an injury because of any potential
19 violation of California Labor Code § 226. (Mara Dec. ¶ 47).

20 It should be noted that the waiting time penalties claim is derivative of the meal period,
21 rest period, and unpaid wages claims. As such, if those claims fail, the waiting time penalties
22 claim would also be extinguished. (Mara Dec. ¶ 48).

23 **4. Risks to Plaintiffs’ PAGA Claim**

24 Plaintiffs’ PAGA claims are based upon the same underlying conduct as Plaintiffs’ class
25 claims. As such, they are subject to the same risks of establishing employment status and the
26 underlying claims are subject to the same risks on the merits. (Mara Dec. ¶ 49).

27 In addition, there is the risk that the Court would reduce the maximum penalty amount, if
28 established. Section 2699, subdivision (e)(2) provides that “[i]n any action by an aggrieved

1 employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may
2 award a lesser amount than the maximum penalty amount specified by this part if, based on the
3 facts and circumstances of the particular case, to do otherwise would result in an award that is
4 unjust, arbitrary, oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.*,
5 the court found that penalties may be reduced when a defendant has taken its obligations to
6 comply with the law seriously. *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App.
7 4th 1112, 1135-1136 (2012). URS argues that if the case were to continue in litigation, it would
8 be able to show that it took its obligations to comply with the law seriously. As such, if Plaintiffs
9 were able to prevail on the merits of their PAGA claims, the Court may reduce the maximum
10 penalty amount. (Mara Dec. ¶ 50).

11 As noted, Plaintiffs’ PAGA claims are based on the same alleged unlawful conduct as
12 their class claims. Because of this, the likelihood of the Court reducing the PAGA penalties
13 awarded to Plaintiffs and the Aggrieved Individuals – assuming liability is proven as to each of
14 Plaintiffs’ claims – is higher in this case where Class Members would be receiving damages for
15 the same conduct under both the class claims and the PAGA claims. URS argues that this would
16 be an unjust double recovery and would lead the Court to reducing any PAGA penalty amount.
17 (Mara Dec. ¶ 51).

18 **5. Maintaining Certification**

19 Should litigation continue, there is also the risk that Plaintiffs may not be able to maintain
20 certification of the Class or of a subset of Class Members. Specifically, URS argues that if
21 litigation were to continue, it would move to decertify a subset of the Class Members that used
22 assistant drivers. URS contends that decertification is proper because some Class Members used
23 assistant drivers and Plaintiffs will not be able to show class-wide data reflecting which routes
24 were driven by a Class Member and which were driven by a secondary driver utilized by a Class
25 Member. This is important because, if there is no way to determine who drove each load there is
26 no way to determine who incurred damages, i.e., who incurred expenses or who incurred wage
27 loss. (Mara Dec. ¶ 52).

28 URS contends that to try to determine who was injured would prove unmanageable. URS

1 relies on the rationale in the case *Villapando v. Excel Direct*. See *Villalpando v. Exel Direct Inc.*,
2 12-cv-04137, 161 F. Supp. 3d 873 (N.D. Cal. May 20, 2016). In *Villapando*, the Northern District
3 decertified a portion of a certified class for similar reasons that URS presents here. The court in
4 *Villapando* decertified class members who utilized secondary drivers as to all damages. *Id.* at 880.
5 The *Villapando* court found that class members who used secondary drivers could not recover
6 damages for hours worked, miles driven, and expenses incurred by secondary drivers. *Id.* at 881.
7 The *Villapando* court found that the challenge occurred in determining as to these class members
8 what proportion of the driving was personally performed by the class member and what portion
9 of the driving was done by assistant drivers. *Id.* On this basis, the *Villapando* court found that in
10 determining damages for these class members, individual issues overwhelmed common ones and
11 decertification was proper. *Id.* 881-882. (Mara Dec. ¶ 53).

12 For these reasons, while the Court has already granted class certification, Plaintiffs would
13 face challenges in maintaining that certification through trial. (Mara Dec. ¶ 54).

14 **VI. SUFFICIENT DISCOVERY AND INVESTIGATION HAS OCCURRED**

15 Class Counsel conducted a thorough investigation into the facts of this lawsuit. Class
16 Counsel have engaged in substantial investigation and discovery to assess the relative merits of
17 the claims and URS's defenses to them. The discovery, investigation, and litigation process has
18 been adequate to give Class Counsel a sound understanding of the value, strength, and
19 vulnerabilities of the Class's claims.

20 Specifically, Class Counsel has conducted discovery and an investigation into the claims
21 during the prosecution of this action. This discovery, investigation, and prosecution has included,
22 among other things, (a) holding multiple meetings with Plaintiffs and Class Members; (b) serving
23 substantial discovery on URS, including Class-wide discovery; (c) inspecting and analyzing
24 documents and data produced by Plaintiff Clemons and Plaintiff Sales, Class Members, and URS;
25 (d) analyzing the legal positions taken by URS and the developments in the law related to various
26 claims; (e) defending class representative depositions and the depositions of three Class
27 Members; (f) deposing URS's Rule 30(b)(6) designee; (g) engaging in briefing on the motion to
28 dismiss; (h) prevailing on a contested motion for class certification; (i) communicating and

1 holding meetings with Class Members; (j) analyzing potential damages before and throughout the
2 settlement negotiation process; (k) researching the applicable law with respect to the Class's
3 claims and URS' potential defenses; and (l) assessing the risk of further litigation. (Mara Dec. ¶
4 16).

5 After conducting an analysis of the materials URS produced, Class Counsel also drew on
6 their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs'
7 claims. This discovery allowed Class Counsel to assess the merits and value of Plaintiffs' claims
8 and defenses thereto, if a settlement was not reached. Based on their review and independent
9 investigation into the facts and claims asserted in this matter, Class Counsel believe that this
10 settlement is fair, reasonable, and adequate and is in the best interest of the class. (Mara Decl. ¶
11 17).

12 **VII. CLASS COUNSEL HAVE EXTENSIVE EXPERIENCE ACTING AS CLASS COUNSEL**

13 As set forth in Plaintiffs' Motion for Attorneys' Fees, Costs, and Class Representative
14 Enhancement Payment (ECF No. 122), Class Counsel's experience in complex class action
15 matters is extensive. Class Counsel have prosecuted numerous cases on behalf of employees for
16 California Labor Code violations and thus are experienced and qualified to evaluate the class
17 claims present in this case, and the defenses thereto, and to evaluate settlement versus trial on a
18 fully informed basis. This experience instructed Class Counsel on the risks and uncertainties of
19 further litigation and guided their determination to endorse the proposed settlement.

20 **VIII. THE CLASS MEMBERS' RESPONSE TO THE SETTLEMENT IS FURTHER EVIDENCE THAT THE SETTLEMENT IS FAIR AND REASONABLE**

21 The Ninth Circuit has held that the number of class members who object to a proposed
22 settlement is a factor to be considered in determining a settlement's fairness. *Mandujano v. Basic*
23 *Vegetable Products, Inc.*, 541 F. 2d 832, 837 (9th Cir. 1976). Here, 91% of the Class did not
24 object to the settlement. In addition, no Class Members requested to be excluded from the
25 settlement, resulting in a 100% participation rate in the settlement. The fact that an overwhelming
26 majority of the Class Members support the settlement and the fact that there were no requests for
27 exclusion evidences the Class Members' endorsement of this non-reversionary settlement.
28

1 **IX. THE COURT SHOULD APPROVE THE SETTLEMENT ADMINISTRATION**
2 **FEE**

3 The Parties agreed to hire Phoenix as the Settlement Administrator, a choice the Court
4 approved in conjunction with granting preliminary approval. Phoenix was responsible for mailing
5 and emailing the Class Notice to Class Members, obtaining better addresses for undeliverable
6 Class Notices, responding to Class Member inquiries, providing weekly status reports to all
7 counsel, receiving communications from the Class Members, and providing a declaration
8 documenting its duties and responsibilities in administering the Class Notice. Following the grant
9 of final approval, Phoenix will continue to calculate the payments to Class Participants, send the
10 individual settlement shares to Class Participants, distribute other payments ordered by the Court,
11 and perform such other duties as described in the Joint Stipulation. Phoenix's fee of \$11,000 for
12 services rendered and to be rendered is fair and reasonable and should be granted.

13 At preliminary approval, Phoenix's fee was \$9,000. Although this fee increased due to
14 additions to Phoenix's original quote,¹⁶ Phoenix's fee is still lower than the two competing bids
15 received from other administration companies. Prior to preliminary approval, Class Counsel
16 requested quotes from three administration companies: Phoenix; ILYM Group, Inc.; and
17 Simpluris. ILYM Group, Inc.'s quote for the administration process was \$29,000 and Simpluris'
18 quote for the settlement administration process was \$12,000. As such, Phoenix's fee of \$11,000
19 is still the lowest administration cost and should be granted.

20 **X. THE COURT SHOULD APPROVE THE PAGA PAYMENT TO THE LWDA**

21 The payment of \$94,743.75 (75% of \$126,325) to the LWDA for its share of the applicable
22 penalties claimed under PAGA, is reasonable under the circumstances. The Parties negotiated a
23 good faith amount to the LWDA. The sum to be paid to the LWDA was not the result of self-
24 interest at the expense of other Class Members. The LWDA was provided notice of the settlement
25 concurrently with the filing of the preliminary approval motion and the instant motion. Plaintiffs
26 did not receive a response or objection to the settlement from the LWDA. (Mara Decl. ¶ 56).
27 Thus, Plaintiffs respectfully requests the Court finally approve the sum of \$94,743.75 for payment

28 ¹⁶ Phoenix's original quote did not take into account a Spanish translation or emailing of the
Class Notices.

1 to the LWDA.

2 **XI. CONCLUSION**

3 Based on the foregoing, Plaintiffs respectfully request that the Court find the settlement is
4 fair, reasonable, and adequate and grant final approval of the settlement. Plaintiffs further request
5 the Court approve the requested settlement administration fee and PAGA payment. Last,
6 Plaintiffs respectfully request the Court enter final judgment in this matter.

7
8 Dated: February 8, 2024

MARA LAW FIRM, PC

/s/ David Mara

David Mara, Esq.

Jill Vecchi, Esq.

Representing the Class

11
12 Dated: February 8, 2024

HUNTER PYLE LAW

/s/ Hunter Pyle

Hunter Pyle, Esq.

Andrea A. Núñez, Esq.

Representing the Class