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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
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: October 5, 2023
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) Preliminarily approving the class action settlement embodied in the Stipulation
4 and Settlement of Class Action Claims; (2) Approving the Class Notice and the plan for
5 distribution of the Notice; (3) Appointing the Settlement Administrator; and (4) Scheduling a Final
6 Approval Hearing.

7 This motion is set for determination on October 5, 2023, at 2:00 p.m. in Courtroom No. 6
8 (2nd Floor) in the above entitled courthouse located at 1301 Clay Street, Oakland, California
9 94612. This motion is based upon this notice, the accompanying Memorandum of Points &
10 Authorities filed herewith, the accompanying Declarations of David Mara, Esq., and Hunter Pyle,
11 Esq., filed herewith, the Joint Stipulation of Settlement and Release of Class Action Claims and
12 all exhibits thereto, the filings on record in this case, and upon such further evidence, both
13 documentary and oral, that may be presented at the hearing of this motion.

14
15 Dated: August 31, 2023

MARA LAW FIRM, PC

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

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19 Dated: August 31, 2023

HUNTER PYLE LAW

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

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1 **I. INTRODUCTION**

2 This is a certified class action in which all Class Member claims hinge on Plaintiffs’ ability
3 to prevail on their claim that they were misclassified as independent contractors, rather than
4 employees. Named Plaintiffs Robert Bejar and Martin Chavez (hereinafter “Plaintiffs”) are Class
5 Members who signed Independent Contractor Service Agreements with Defendants URS
6 Midwest, Inc. d/b/a United Road and United Road Services, Inc. (hereinafter “URS” or
7 “Defendants”) (collectively Plaintiffs and URS are referred to as the “Parties”). Through this wage
8 and hour class action lawsuit, Plaintiffs allege that URS was their lawful employer and that URS
9 failed to reimburse drivers for all business expenses, failed to pay wages for all hours worked,
10 failed to pay all wages owed when services ended (“waiting time penalties”), and failed to provide
11 legally compliant pay stubs.¹

12 Plaintiffs now seek preliminary approval of the Parties’ Joint Stipulation of Settlement and
13 Release of Class Action Claims (hereinafter “Joint Stipulation” or “Settlement Agreement”²). The
14 proposed Gross Settlement Amount (“GSA”) is a non-reversionary \$7,500,000. The settlement is
15 sought on behalf of approximately 319 class members. The Class is defined as “all individuals
16 who signed Independent Contractor Service Agreements with URS, who were assigned to a
17 business unit in California, and who drove in California at any time from November 18, 2015 to
18 March 29, 2022. If the individual executing the Independent Contractor Service Agreement did so
19 on behalf of a corporation or LLC, then the individual or individuals who were principals or owners
20 of the corporation or LLC shall be considered part of the Class.” (Exhibit 1 at Section I, Paragraph
21 5, Page 2).

22 Class Participants, meaning any and all Class Member(s) who do not submit a timely and
23 valid Opt-Out Request,³ will automatically receive their share of the Settlement without needing
24 to submit a claim form. Assuming each Class Member participates in the settlement, after all
25

26 _____
27 ¹ Named Plaintiffs Denson Sales and Andre Clemons did not sign the Settlement Agreement.

28 ² The Joint Stipulation is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as Exhibit
1. “Exhibit 1” referenced herein refers to the Joint Stipulation.

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

1 deductions the settlement is projected to pay each Class Member an average of \$17,017.79⁴ with
2 an estimated high payment of \$27,583.40.

3 In addition, the settlement includes PAGA Aggrieved Individuals. PAGA Aggrieved
4 Individuals are Class Members that worked at any time during the PAGA Period. (Exhibit 1 at
5 Section I, Paragraph 25, Page 5). The PAGA Period is February 10, 2019, through the date on
6 which the Court issues an order granting preliminary approval. (Exhibit 1 at Section I, Paragraph
7 28, Page 5). There are approximately 241 PAGA Aggrieved Individuals. PAGA Aggrieved
8 Individuals will automatically receive their share of the PAGA Payment available for distribution
9 to PAGA Aggrieved Individuals. The Joint Stipulation allocates \$126,325 to civil penalties
10 recoverable under PAGA, of which 75% – or \$94,743.75 – will be paid to the LWDA; and 25% –
11 or \$31,581.25 – will be distributed among PAGA Aggrieved Individuals. (Exhibit 1 at Section III,
12 Paragraph 3, Page 12). PAGA Aggrieved Individuals are estimated to receive an average payment
13 of \$131.04⁵ and a high payment of \$369.04.

14 The proposed settlement was reached after considerable investigation, including the
15 depositions of URS' representative, the depositions of Andre Clemons and Denson Sales, the
16 depositions of three Class Members, interviewing dozens of Class Members and taking
17 declarations from 12 of them, as well as the analysis of over thirty thousand (30,000) pages of
18 documents. Additionally, Plaintiffs prevailed on a contested motion for class certification.

19 The settlement is reflective of the relative strengths of Plaintiffs' case and the risks
20 associated with continued litigation, including the risk that URS would prevail on its defenses, as
21 well as challenges with maintaining certification. When taking these risks into account, the
22 proposed settlement is reasonable, and Class Members should receive notice of it so they can
23 determine for themselves – once they see the amount they are set to recover – if they think it is in
24 their best interest. It is therefore respectfully requested that the Court grant preliminary approval

26 ⁴ The Net Settlement Amount is approximately \$5,428,675. \$5,428,675 divided by 319 Class
27 Members equates to \$17,017.79 per Class Member.

28 ⁵ The PAGA Payment available for allocation to PAGA Aggrieved Individuals is \$31,581.25.
\$31,581.25 divided by 241 PAGA Aggrieved Individuals equates to \$131.04 per PAGA Aggrieved
Individual.

of the settlement, approve the notice of class action settlement, appoint Phoenix Class Action Administration Solutions as the Settlement Administrator, and schedule a final approval hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

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

1. Plaintiffs' Claims

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

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

On April 23, 2020, the Court related the *Sales Action* with the *Clemons Action*. On May 4, 2020, the Court granted a request to permit Plaintiff Sales and Plaintiff Clemons to file a joint complaint incorporating Plaintiff Clemons and his claims into the *Sales Action*. The *Clemons Action* was subsequently dismissed on May 27, 2020. (Mara Dec. ¶ 10).

Plaintiff Sales and Plaintiff Clemons jointly filed a First Amended Complaint on May 4, 2020, asserting the following Claims under California law: (1) failure to pay all straight time wages at statutory minimum wage; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to reimburse/illegal deductions; (5) violations of unfair competition law; (6) knowing and intentional failure to properly itemize wage statements; (7) failure to timely pay

1 all wages owed at termination; and (8) violations of California’s Private Attorneys General Act
2 (“PAGA”). Plaintiffs Sales and Clemons brought these claims on behalf of themselves and all
3 others similarly situated. (Mara Dec. ¶ 11).

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

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

9 **2. Relevant Procedural History**

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

16 Plaintiff Clemons and Plaintiff Sales filed a Motion for Class Certification on April 29,
17 2021. Plaintiff Clemons and Plaintiff Sales requested certification of the following class: “All
18 individuals who signed Independent Contractor Service Agreements with URS, who were assigned
19 to a business unit in California, and who drove in California at any time from November 18, 2015,
20 to the date the Court enters an order certifying the matter as a class action.” After briefing was
21 completed, the Court granted this motion on March 29, 2022, and certified the Class as defined.
22 (Mara Dec. ¶ 15).

23 **3. Investigation**

24 Class Counsel have engaged in substantial investigation and discovery to assess the relative
25 merits of the claims and URS’s defenses to them. The discovery, investigation, and litigation
26 process has been adequate to give Class Counsel a sound understanding of the value, strength, and
27 vulnerabilities of the Class’s claims. Specifically, Class Counsel has conducted discovery and an
28 investigation into the claims during the prosecution of this action. This discovery, investigation,

1 and prosecution has included, among other things, (a) holding multiple meetings with Plaintiffs
2 and Class Members; (b) serving substantial discovery on URS, including Class-wide discovery;
3 (c) inspecting and analyzing documents and data produced by Plaintiff Clemons and Plaintiff
4 Sales, Class Members, and URS; (d) analyzing the legal positions taken by URS and the
5 developments in the law related to various claims; (e) defending class representative depositions
6 and the depositions of three Class Members; (f) deposing URS's Rule 30(b)(6) designee; (g)
7 engaging in briefing on the motion to dismiss; (h) prevailing on a contested motion for class
8 certification; (i) communicating and holding meetings with Class Members; (j) analyzing potential
9 damages before and throughout the settlement negotiation process; (k) researching the applicable
10 law with respect to the Class's claims and URS' potential defenses; and (l) assessing the risk of
11 further litigation. (Mara Dec. ¶ 16).

12 **4. Settlement Negotiations**

13 This settlement was reached with the assistance of an experienced mediator, Jeffrey Ross,
14 after arms-length bargaining by the Parties at a formal mediation scheduled on November 4, 2021,
15 and extensive subsequent conversations. The Parties' settlement has been memorialized in a long
16 form settlement agreement. The Parties now seek the Court's approval of their Joint Stipulation,
17 which is attached to the Declaration of David Mara, Esq., in Support of Plaintiffs' Motion for
18 Preliminary Approval of Class Action Settlement as Exhibit 1.

19 **III. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR** 20 **PRELIMINARY APPROVAL**

21 Rule 23(e) provides that any compromise of a class action must receive court approval.
22 The court has broad discretion to grant approval and should do so where the proposed settlement
23 is "fair, adequate, reasonable, and not a product of collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d
24 1011, 1026 (9th Cir. 1998). In deciding whether a settlement should be approved, the Ninth Circuit
25 has a "strong judicial policy that favors settlement, particularly where complex class action
26 litigation is concerned." *In re Heritage Bond Litigation*, 2005 WL 1594403 (C.D. Cal. 2005); *see*
27 *also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (The Ninth Circuit
28 maintains a "strong judicial policy" that favors settlement of class actions.). Court approval

1 involves a two-step process in which a court first determines whether a proposed class action
2 settlement deserves preliminary approval and then, after notice is given to class members, whether
3 final approval is warranted. *Manual of Complex Litigation*, Fourth Ed., § 21,632 (2004). At the
4 preliminary approval stage, the Court need only “determine whether the proposed settlement is
5 within the range of possible approval.” *Gatreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982);
6 *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). A class action
7 settlement should be approved if “it is fundamentally fair, adequate and reasonable.” *Class*
8 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

9 Within this framework, preliminary approval of a settlement is appropriate if “the proposed
10 settlement appears to be the product of serious, informed, non-collusive negotiations, has no
11 obvious deficiencies, does not improperly grant preferential treatment to class representatives or
12 segments of the class, and falls within the range of possible approval.” *In re Tableware Antitrust*
13 *Litig.*, 484 F. Supp. 2d at 1079. The proposed settlement need not be ideal, but it must be fair and
14 free of collusion. *Hanlon*, 150 F.3d at 1027 (“Settlement is the offspring of compromise; the
15 question we address is not whether the final product could be prettier, smarter or snazzier, but
16 whether it is fair, adequate and free from collusion.”). The Ninth Circuit has shown longstanding
17 support of settlements reached through arms’ length negotiations by capable opponents. In
18 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009), the Ninth circuit expressly
19 opined that courts should defer to the “private consensual decision of the [settling] Parties.” *Id.* at
20 965, citing *Hanlon*, 150 F.3d at 1027.

21 Although at preliminary approval, the Court need not engage in the rigorous analysis
22 required for final approval (*see Manual for Complex Litigation*, Fourth, § 22.661 at 438 (2004)),
23 the ultimate fairness determination will include balancing several factors, including:

24 [T]he strength of plaintiffs’ case; the risk, expense, complexity and likely duration
25 of further litigation; the risk of maintaining class action status throughout the trial;
26 the amount offered in settlement; the extent of discovery completed, and the stage
27 of the proceedings; the experience and views of counsel; the presence of a
28 governmental participant; and the reaction of the Class Members to the proposed
settlement.

Officers for Justice, supra, 688 F.2d 615, 625. Not all of these factors apply to every class action

1 settlement, and one factor alone may prove determinative in finding sufficient grounds for court
2 approval. *Nat'l Rural Telecommunication Cooperative v. Directv, Inc.*, 221 F.R.D. 523, 525-26
3 (C.D. Cal. 2004). District courts have wide discretion in assessing the weight and applicability of
4 each factor. *Id.*

5 As outlined herein, the proposed settlement is the product of extensive arm's-length
6 negotiations. The case did not settle at the initial full day mediation. Rather, following the
7 mediation and with further facilitation by mediator Jeffrey Ross, the Parties were able to reach the
8 proposed settlement. In addition, the factors noted above are commonly considered at preliminary
9 approval. Those factors, in their respective levels of applicability, favor approval of the settlement
10 here as shown herein.

11 **IV. THE PROPOSED SETTLEMENT MEETS THE NORTHERN DISTRICT OF** 12 **CALIFORNIA'S PROCEDURAL GUIDELINES FOR CLASS ACTION** 13 **SETTLEMENTS**

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

19 **1. Information about the Settlement**

20 **A. Settlement Class**

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

22 All individuals who signed Independent Contractor Service Agreements with URS,
23 who were assigned to a business unit in California, and who drove in California at
24 any time from November 18, 2015 to March 29, 2022. If the individual executing
the Independent 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.

25 (Exhibit 1 at Section I, Paragraph 5, Page 2).

26 The Class certified by the Court on May 29, 2022 is defined as follows:

27 All individuals who signed Independent Contractor Service Agreements with URS,
28 who were assigned to a business unit in California, and who drove in California at
any time from November 18, 2015, to the date of this order[.]

(ECF No. 53).

The two class definitions are the same with the exception that the Class definition in the Joint Stipulation clarifies that if an individual executing the Independent 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. However, the same qualifiers for these individuals remain, namely, that the individual must have been assigned to a business unit in California and have driven in California at some time between November 18, 2015, to March 29, 2022. (Mara Dec. ¶ 18).

B. Released Claims

i. Release of Class Claims

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

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

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

The Court granted class certification of claims for failure to provide business expenses, failure to pay minimum wage, failure to provide accurate wage statements, failure to pay all wages due at termination, and Unlawful Competition. (*See* ECF No. 53). The Released Class Claims in the Joint Stipulation are the same as those certified by the Court with the exception of the inclusion of meal and rest period claims in the Joint Stipulation.

On May 18, 2020, URS filed a Motion to Dismiss Plaintiffs Clemons and Sales meal and rest break claims. After briefing was completed, the Court granted this motion on July 17, 2020, and dismissed the second and third causes of action with prejudice. No other Class Members' meal and rest break claims were adjudicated through this motion.

Because Plaintiffs Bejar and Chavez were not named class representatives when URS filed

its motion to dismiss, they retain their meal and rest period claims, as do all other members of the Class and these claims were included in the complaints on file in this action. As such, they are properly included in the released claims, though possess minimal value, as the Ninth Circuit has ruled that the FMCSA did not abuse its discretion in issuing the Preemption Decision and Order of December 28, 2018⁶ and that the Decision and Order apply to California meal and rest break claims that pre-date and post-date the issuance of the Order⁷.

ii. Release of PAGA Claims

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

All claims asserted in the Operative PAGA letter and/or the Second Amended Complaint, 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). These claims are the same as the PAGA claims included in the Second Amended Complaint and/or in the amended notice provided to the LWDA.

C. The Proposed Settlement is a Reasonable Compromise of Claims

i. Employment Status

Plaintiffs, and the certified Class, are truck drivers who contracted with and drove for URS during the Class Period. Each of the Class Members was classified by URS as an independent contractor. The core question in the case is whether URS correctly classified the drivers as independent contractors. Plaintiffs assert that URS's classification was in error, and that the drivers were URS's employees under California law. As such, all the claims alleged in this matter are based on URS's failure to classify Class Members as employees. Put differently, if Plaintiffs lose on this single issue, they will take nothing from this matter. (Mara Dec. ¶ 19).

⁶ *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.").

⁷ *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.").

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

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

13 **ii. Plaintiffs’ Underlying Claims**

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

23 Plaintiffs also assert that due to their alleged misclassification, they were not provided with
24 meal periods, rest periods, itemized wage statements and waiting time penalties that were owed to
25 them under California law. Plaintiffs further assert that the contracts they operated under only paid
26 them for the time they were driving and did not pay them for the time they were performing non-
27 driving tasks such as pre-trip and post-trip inspections. (Mara Dec. ¶ 23).

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1 various points during hauls. (Mara Dec. ¶ 26).

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

8 In *Bowerman*, the Ninth Circuit reversed the district court’s finding that class members
9 were employees. Although the district court held that “[n]o reasonable juror could review the
10 Vendor Packets, the work orders, the trainings, the Vendor Profiles, the discipline, and the Vendor
11 scorecards, and conclude [that] any of the Vendors are independent contractors[,]”⁹ the Ninth
12 Circuit rejected that holding, arguing that not all controls are treated equally under the *Borello* test.
13 Specifically, the Ninth Circuit reasoned that “if control may be exercised only as to the result of
14 the work and not the means by which it is accomplished, an independent contractor relationship is
15 established.” *Bowerman*, 60 F.4th at 474. The Ninth Circuit found that all the facts on which the
16 *Bowerman* plaintiffs relied to establish an employment relationship under *Borello* could
17 reasonably be interpreted as controlling the results of the work. *Id.* at 474-476. The Ninth Circuit
18 also found that many of *Borello*’s secondary factors “tip in favor of independent contractor status.”
19 *Id.* at 476. Specifically, the Ninth Circuit ruled that “the parties intent to create an independent
20 contractor relationship, the class members’ opportunity for profit or loss, the class members’
21 employment of assistants” tended to show an independent contractor relationship. *Id.* (Mara Dec.
22 ¶ 28).

23 Under *Bowerman*, this Court or a jury could find that many of the controls Plaintiffs rely
24 on go to controlling the results of the timely delivery of cars for URS’ customers. Additionally,
25 like *Bowerman*, URS drivers have the ability to hire assistants to perform their work under the

26 ⁸ This opinion was initially issued on July 5, 2022 at 39 F.4th 652. Rehearing *En Banc* was
27 requested and denied. The reviewing Panel, however, ordered the decision amended. Thus, the
28 2023 decision as cited above is the amended version of the original decision.

⁹ *Bowerman*, 60 F.4th at 466.

1 ICSA. Indeed, one of the named class representatives in this matter hired numerous drivers to
2 perform work under his ICSAs with URS. Thus, like *Bowerman*, this Court or jury could find that
3 this “tips in favor of” an independent contractor relationship. (Mara Dec. ¶ 29).

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

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

17 Accordingly, URS asserts that any policies it has that cover independent contractors are in
18 place to meet these requirements. Significantly, one of these requirements is found in 49 C.F.R. §
19 385.5. Under 49 C.F.R. § 385.5, “[t]o meet the safety fitness standard, the motor carrier must
20 demonstrate it has adequate safety management controls in place, which function effectively
21 to ensure acceptable compliance with applicable safety requirements[.]” (Emphasis added).
22 URS argues that the policies Plaintiffs rely on to establish an employment relationship are in place
23 to meet this broad regulation. Put differently, if the policies and practices Plaintiffs rely on as
24 supporting an employment relationship are found to be an offshoot of URS’s federal mandate that
25 it maintain “adequate safety management controls,” they cannot establish an employment
26 relationship and the Class would take nothing. (Mara Dec. ¶ 32).

27 Although Counsel for Plaintiffs believes that URS’ policies and rights to control go beyond
28 simply trying to comply with federal safety mandates or other federal regulations, some of the

“control” facts are safety-oriented, such as accident reporting, maintaining the equipment according to URS’ specifications, and load securement. With the potential exclusion of some, many, or all facts related to URS’ control from the employment question under *Borello*, the probability of losing on the employment issue increases. Given that a loss on that issue would result in the Class taking nothing from this action, considerable weight had to be given to it in evaluating settlement. (Mara Dec. ¶ 33).

2. Risks on the Merits of Plaintiffs’ Underlying Claims

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

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

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

URS has indicated that it intends to file a motion for summary judgment of Plaintiffs’ Business Expense Reimbursement claims under Labor Code § 2802 on the grounds that the claims are preempted under the federal Truth-in-Leasing regulations. Specifically, URS was going to argue that all but Plaintiffs’ claims for cell phone reimbursements are preempted and must be dismissed. If successful, this argument would have absolutely gutted the value of the most substantial claims in this case. Despite firmly believing the claims are not preempted, Plaintiffs must deal with the unfortunate and very real fact that three out of five cases in the ninth circuit and California to deal with the issue have found in favor of preemption. (Mara Dec. ¶ 35).

For example, in *Valdez v. CSX Intermodal Terminals, Inc.*, the Northern District of California found that expenses associated with acquiring and/or maintaining vehicles, fuel,

1 maintenance, insurance, and cargo and property damage are preempted under the federal Truth-in-
2 Leasing regulations:

3 Defendant contends that Plaintiffs' Section 2802 reimbursement claims are
4 preempted by 49 C.F.R. Section 376.12(d), (e), (i), and (j). Defendant is largely
5 correct. Plaintiffs cannot seek reimbursement for the expenses associated with
6 acquiring and/or maintaining 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. .
..

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

10 Plaintiffs' claim for cargo and property damage is preempted by 49 C.F.R. Section
11 376.12(j)(3), which permits leases to specify conditions under which deductions for
12 such 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.

13 *Valdez v. CSX Intermodal Terminals, Inc.*, 15-cv-05433, 2017 U.S. Dist. LEXIS 66923 *1, *25-
14 *26 (N.D. Cal. April 10, 2017). The only expenses that *Valdez* found not to be preempted were
15 expenses for drivers' use of their personal cell phones. *Id.* at *26-*27.

16 As the Northern District did in *Valdez*, the Central District of California found preemption
17 in *Salter v. Quality Carriers*, 20-cv-479, 2021 U.S. Dist. LEXIS 213111 *1, *34-*35 (C.D. Cal.
18 Oct. 27, 2021) ([B]ecause the [Truth-in-Leasing] regulations expressly provide the parties the
19 freedom to contract to allocate certain operational costs to contractors and to deduct those costs
20 from the contractors' compensation, the Court concludes that Plaintiff's claim for unreimbursed
21 business expenses under California Labor Code § 2802 and allegedly illegal deductions
22 under California Labor Code § 221 are preempted."). Also, in the California Court of Appeal in
23 *Rodriguez v. RWA Trucking Co., Inc.*, 238 Cal.App.4th 1375, 1393 (2013), found that insurance
24 expenses were preempted.¹⁰

25 Only two Ninth Circuit District Courts have ruled against preemption - *Goyal v. CSX*
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27 ¹⁰ 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 *Intermodal Terminals, Inc.*, 17-cv-06081, 2018 U.S. Dist. LEXIS 164643 *1 (N.D. Cal. Sept. 25,
2 2018) and *Henry v. Cent. Freight Lines, Inc.*, 2019 U.S. Dist. LEXIS 99594 *1, *15 (E.D. Cal.
3 June 13, 2019). Plaintiffs contend that the reasoning in *Goyal* is more persuasive than the cases
4 relied upon by URS. However, given the fact that a majority of courts faced with the issue have
5 ruled against the Plaintiffs' interest, a considerable amount of weight had to be given to the
6 prospect that Plaintiffs here would similarly succumb to a preemption argument on their most
7 valuable expense reimbursement claims. (Mara Dec. ¶ 36).

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

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

21 Plaintiffs disagree that URS pays Class Members an enhanced compensation and rely on
22 the case *Espejo v. The Copley Press, Inc.*, 13 Cal. App. 5th 329, 367 (2017). Plaintiffs argue that
23 URS' compensation is not the same as in *Gattuso* because URS deducts amounts for costs before
24 they pay the compensation and there is no way for drivers to identify what amount is being paid
25 for labor performed and the amount being paid as reimbursement for business expenses. *See Id.* at
26 366-367. (Mara Dec. ¶ 38). The suggestion that the deductions are detailed on the settlement sheets
27 was rejected by the court in *Espejo* because the settlement sheets do not "communicate that the
28 carriers were being reimbursed or compensated in the amount of the deductions stated on the
invoices." *Id.* at 366. The Northern District of California in *Smith v. Cardinal Logistics*

1 *Management Corp.* found in a similar situation to the one presented here that the employer's
2 compensation system did not satisfy *Gattuso's* requirements for expense reimbursement through
3 enhanced compensation. *See Smith v. Cardinal Logistics Management Corp.*, 07-cv-2104, 2009
4 U.S. Dist. LEXIS 80758 *1 (N.D. Cal. Aug. 19, 2009). The Northern District of California in
5 *Villalpando v. Exel Direct Inc.* also found that employers could not meet their obligations
6 under *Gattuso* "by simply stating that their [pay] rate covers these expenses; they must provide
7 their employees with a means of determining whether these assertions are true." *Villalpando v.*
8 *Exel Direct Inc.*, 12-cv-04137, 161 F. Supp. 3d 873 (N.D. Cal. May 20, 2016).

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

11 **iii. Potential Damages Under the Business** 12 **Reimbursement Claim**

13 The potential exposure to URS if Plaintiffs prevailed on their reimbursement claims for
14 insurance, fuel, maintenance, and damage claims is considerably higher than the proposed
15 settlement amount. That exposure, however, is extremely misleading and cannot be evaluated in a
16 vacuum and devoid of the very real and threatening context explained above from preemption
17 attacks and, of course, losing on the employment issue. Again, three out of five cases in the Ninth
18 Circuit and California have found in favor of preemption of all but cell phone expenses and
19 *Bowerman's* precedence must be respected. (Mara Dec. ¶ 40).

20 If Plaintiffs were successful in their reimbursement claims – meaning they won on the
21 employment issue and prevailed over all 2802 challenges – they and the Class Members could be
22 entitled to the maximum potential damages of \$82,580,165.¹¹ As outlined above, if the Court were
23 to side with a majority of courts that Class Members are only entitled to reimbursements for cell
24 phone expenses, this would drastically reduce the maximum potential exposure. If this were the
25 case, the maximum potential exposure would be reduced to \$506,750¹², which represents only cell

26 ¹¹ \$21,587,775 for insurance; \$52,327,151 for fuel expenses; \$5,452,272 for repairs; \$1,481,658
27 for damage caused to the vehicles they were transporting; \$1,224,559 for operating expenses (*see*
28 Declaration of Kevin Taylor at ¶ 8); and \$506,750 for cell phone expenses.

¹² Approximately 20,270 months worked by Class Members in the Class Period x \$25.00 (25% of
a \$100 cell phone bill).

1 phone reimbursements. If the Court were to find that Class Members' compensation was enhanced
2 to cover reimbursements or if the Court found no employment relationship exists, Class Members
3 would not be entitled to any damages under this claim. (Mara Dec. ¶ 41).

4 **b. If the ICSAs can be Read to Compensate for All**
5 **Transportation-Related Services, They Will**
6 **Compensate for Driving and Non-Driving and**
7 **Plaintiffs' Claims for Minimum Wage**
8 **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 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. ¶ 42).

14 In opposing this claim, URS relies on the case *Salter v. Quality Carriers*, 20-cv-479, 2021
15 U.S. 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. ¶ 43).

24 Here, if the ICSAs can be read to compensate for transportation related services, like *Salter*,
25 they would compensate for all tasks, including non-driving time, associated with transporting.
26 Therefore, considerable deference had to be paid to the fact this Court or a jury could find the
27 ICSAs did not contemplate compensation of specific acts – i.e., driving – but paid for everything,
28 which would result in Class Members taking nothing for their minimum wage claims. (Mara Dec.
¶ 44).

If Plaintiffs were successful in their unpaid wages claim, they and the Class Members could

1 be entitled to the maximum potential damages of \$3,389,027.¹³ As noted above, if the Court or
2 jury were to find that the ICSA compensates drivers for all transportation related services, then the
3 damages under this claim would be zero. (Mara Dec. ¶ 45).

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

10 Early in the case, this Court granted URS’ motion to dismiss Plaintiffs Sales’ and Clemons’
11 claims for meal and rest periods with prejudice pursuant to the FMCSA’s December 28, 2018,
12 Decision and Order. In that Decision and Order, the FMCSA ordered that California’s meal and
13 rest period claims were preempted. The Ninth Circuit ruled that the agency did not exceed its
14 authority in issuing the decision. *Int’l Bhd. Of Teamsters, Local 2785 v. Fed. Motor Carrier Safety*
15 *Administration*, 986 F.3d 841, 846 (9th Cir. 2021). (“Because the agency’s decision reflects a
16 permissible interpretation of the Motor Carrier Safety Act of 1984 and is not arbitrary or
17 capricious, we deny the petitions for review.”). (Mara Dec. ¶ 46).

18 The Ninth Circuit, however, left open the question of whether that Decision and Order of
19 the FMCSA could apply to claims retroactive to its issuance date of December 28, 2018. The Ninth
20 Circuit, however, answered that question in the affirmative, in *Valiente v. Swift Transportation*
21 *Co. of Arizona, LLC*, 54 F.4th 581, 587 (9th Cir. 2022). (Finding “Congress and the FMCSA have
22 spoken with a clear voice in prohibiting enforcement of California’s MRB rules[, and] [a]llowing
23 Plaintiffs to move forward with their claims would require this Court to act in opposition to that
24 decree.”). Thus, the meal and rest period claims are not part of the class certification order here
25 and the only potential value of meal and rest period claims lies in the remote and totally
26 unknowable prospect that the agency may reverse course at some point. There is no evidence the
27 agency is going to change its opinion. (Mara Dec. ¶ 47).

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¹³ 285,512 hours logged as on-duty not driving x \$11.87 per hour (average of the applicable minimum wages between November 19, 2015, and the present) per hour = \$3,389,027.44.

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 Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 § 13520. “A ‘good faith dispute’ that any wages are due occurs when an employer presents a defense, based in law or fact, which would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.* (Mara Dec. ¶ 48).

URS contends that any failure to pay wages due at the separate of employment was not willful. URS argues that it would not be liable for waiting time penalties because a “good faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. ¶ 49).

As to Plaintiffs’ wage statement claim, URS asserts that any violation of California Labor Code § 226 was not “knowing and intentional.” *See* Cal. Lab. Code § 226(e) (“An employee suffering injury as a result of a **knowing and intentional** failure by an employer” may recover damages”) (emphasis added); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1195 (2008) (“Some statutory penalties are imposed only if an employers’ violation was ‘willful’ or ‘knowing.’ . . . [S]ection 226, subdivision (e) penalizes an employer’s ‘knowing and intentional’ failure to provide itemized wage statements under section 226, subdivision (a)[.]”). URS also contends that employees cannot show that they have suffered an injury because of any potential violation of California Labor Code § 226. (Mara Dec. ¶ 50).

If Plaintiffs were successful in their wage statement claim, they and the Class Members could be entitled to the maximum potential damages of \$964,000.¹⁴ Further, if Plaintiffs were successful in their waiting time penalties claim, they and the Class Members could be entitled to

¹⁴ \$4,000 maximum penalty x 241 Class Members who worked within the 1-year statute of limitations = \$964,000.

1 the maximum potential damages of \$427,320.¹⁵ It should be noted that the waiting time penalties
2 claim is derivative of the meal period, rest period, and unpaid wages claims. As such, if those
3 claims fail, the waiting time penalties claim would also be extinguished. (Mara Dec. ¶ 51).

4 **4. Risks to Plaintiffs' PAGA Claim**

5 Plaintiffs' PAGA claims are based upon the same underlying conduct as Plaintiffs' class
6 claims. As such, they are subject to the same risks of establishing employment status and the
7 underlying claims are subject to the same risks on the merits. (Mara Dec. ¶ 52).

8 In addition, there is the risk that the Court would reduce the maximum penalty amount, if
9 established. Section 2699, subdivision (e)(2) provides that "[i]n any action by an aggrieved
10 employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may
11 award a lesser amount than the maximum penalty amount specified by this part if, based on the
12 facts and circumstances of the particular case, to do otherwise would result in an award that is
13 unjust, arbitrary, oppressive, or confiscatory." In *Thurman v. Bayshore Transit Management, Inc.*,
14 the court found that penalties may be reduced when a defendant has taken its obligations to comply
15 with the law seriously. *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112,
16 1135-1136 (2012). URS argues that if the case were to continue in litigation, it would be able to
17 show that it took its obligations to comply with the law seriously. As such, if Plaintiffs were able
18 to prevail on the merits of their PAGA claims, the Court may reduce the maximum penalty amount.
19 (Mara Dec. ¶ 53).

20 As noted, Plaintiffs PAGA claims are based on the same alleged unlawful conduct as their
21 class claims. Because of this, the likelihood of the Court reducing the PAGA penalties awarded to
22 Plaintiffs and the Aggrieved Individuals – assuming liability is proven as to each of Plaintiffs'
23 claims – is higher in this case where Class Members would be receiving damages for the same
24 conduct under both the class claims and the PAGA claims. URS argues that this would be an unjust
25 double recovery and would lead the Court to reducing any PAGA penalty amount. (Mara Dec. ¶

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27 ¹⁵ 8 hours x \$11.87 per hour (average of the applicable minimum wages between November 19,
28 2015, and the present) x 30 days x 150 former employees in 3-year statute of limitations =
\$427,320.

54).

If Plaintiffs were successful in their PAGA claim, they and the Class Members could be entitled to the maximum potential damages of \$5,210,000.¹⁶ This amount does not take into consideration the very likely possibility that the Court could reduce the penalty amount. (Mara Dec. ¶ 55).

5. Maintaining Certification

Should litigation continue, there is also the risk that Plaintiffs may not be able to maintain certification of the Class or of a subset of Class Members. Specifically, URS argues that if litigation were to continue, it would move to decertify a subset of the Class Members that used assistant drivers. URS contends that decertification is proper because some Class Members used assistant drivers and Plaintiffs will not be able to show class-wide data reflecting which routes were driven by a Class Member and which were driven by a secondary driver utilized by a Class Member. This is important because, if there is no way to determine who drove each load there is no way to determine who incurred damages, i.e., who incurred expenses or who incurred wage loss. (Mara Dec. ¶ 56).

URS contends that to try to determine who was injured would prove unmanageable. URS relies on the rationale in the case *Villapando v. Excel Direct*. See *Villalpando v. Exel Direct Inc.*, 12-cv-04137, 161 F. Supp. 3d 873 (N.D. Cal. May 20, 2016). In *Villapando*, the Northern District decertified a portion of a certified class for similar reasons that URS presents here. The court in *Villapando* decertified class members who utilized secondary drivers as to all damages. *Id.* at 880. The *Villapando* court found that class members who used secondary drivers could not recover damages for hours worked, miles driven, and expenses incurred by secondary drivers. *Id.* at 881.

¹⁶ 10,420 pay periods in the PAGA period x 5 violations x \$100 per violation = \$5,210,000. However, the Court has already dismissed the meal and rest period claims for Plaintiffs Sales and Clemons. As such, if these claims are taken out of the PAGA exposure analysis, the potential penalties would be \$3,126,000 (10,420 pay periods in the PAGA period x 3 violations x \$100 per violation = \$3,126,000). The Parties have allocated \$126,325 to Plaintiffs' PAGA claims. This is approximately 2% of the Gross Settlement Amount. As outlined herein, the exposure under Plaintiffs' PAGA claims is approximately 5% of the total exposure under all of Plaintiffs' claims, had Plaintiffs been successful in establishing the employment relationship and in proving all of their underlying claims. Given the fact that the Court would likely reduce the amount of PAGA penalties, this allocation is in line with its relative value compared to the total exposure.

1 The *Villapando* court found that the challenge occurred in determining as to these class members
2 what proportion of the driving was personally performed by the class member and what portion of
3 the driving was done by assistant drivers. *Id.* On this basis, the *Villapando* court found that in
4 determining damages for these class members, individual issues overwhelmed common ones and
5 decertification was proper. *Id.* 881-882. (Mara Dec. ¶ 57).

6 For these reasons, while the Court has already granted class certification, Plaintiffs would
7 face challenges in maintaining that certification through trial. (Mara Dec. ¶ 58).

8 **iv. The Settlement Amount of \$7,500,000 is Fair and Reasonable**

9 In ruling on the reasonableness of settlements, courts are not to look at potential exposures
10 in a vacuum. Rather, the potential value if everything went right for the plaintiffs must be tempered
11 against the “risks of continued litigation.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 823 (9th Cir.
12 2012). The proposed settlement need not be ideal, but it must be fair and free of collusion,
13 consistent with counsel’s fiduciary obligations to the class. *Hanlon*, 150 F.3d at 1027.

14 As outlined above, several formidable obstacles related to both the misclassification
15 question and underlying claims threaten to award the Class Members nothing in the continued
16 pursuit of their claims. \$7,500,000 is a substantial sum guaranteed now with an average settlement
17 amount estimated at \$17,017.79. Due to the risks and uncertainty of prolonged litigation, the
18 proposed class settlement is fair and reasonable. *See Edwards v. City of Long Beach*, 2011 WL
19 13180208, at *3, n. 5 (C.D. Cal. Oct. 31, 2011) (“[t]he reasonableness of a settlement is not
20 dependent upon it approaching the potential recovery plaintiffs might receive if successful at
21 trial”); *Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. Jan. 5,
22 2004) (“a proposed settlement may be acceptable even though it amounts to only a fraction of the
23 potential recovery”). (Mara Dec. ¶ 59).

24 **D. Related Cases**

25 There are no other cases that will be affected by the settlement.

26 **E. Proposed Allocation Plan**

27 Under the Joint Stipulation, URS shall pay \$7,500,000 (referred to as the “Gross Settlement
28 Amount” or “GSA”) to fully and finally settle this matter.

1 **i. Funding of the GSA**

2 Within 14 days after the Court grants preliminary approval, URS shall remit \$10,000 by
3 wire transfer to the Settlement Administrator from the Gross Settlement Amount for partial
4 payment of the Settlement Administrator's costs and expenses to administer the Settlement. In the
5 event the Court does not approve the Settlement, any unused amount from the \$10,000 shall be
6 returned to URS and the Parties shall split the fees and costs incurred to the Settlement
7 Administrator. Within thirty days after the Effective Date, URS will remit the balance of the Gross
8 Settlement Amount to the Settlement Administrator by wire transfer. (Exhibit 1 at Section III,
9 Paragraphs 7-8, Page 13).

10 The "Effective Date" is the date when all of the following events have occurred: (a) the
11 Joint Stipulation has been fully executed; (b) the Court has given preliminary approval to the
12 settlement; (c) notice has been given to the Class Members providing them with an opportunity to
13 opt-out of the settlement; (d) if more than 10% of the Class Members opt-out, URS has elected not
14 to exercise its rights to void the settlement; (e) the Court has held a Final Approval and Fairness
15 Hearing and entered a final order and judgment approving the Joint Stipulation; and (f) the later of
16 the following dates: (i) when the period for filing any appeal, writ, or other appellate proceeding
17 opposing the settlement has elapsed without any appeal, writ, or other appellate proceeding having
18 been filed; or (ii) any appeal, writ, or other appellate proceeding opposing the settlement has been
19 dismissed finally and conclusively with no right to pursue further remedies or relief; or (iii) any
20 appeal, writ, or other appellate proceeding has upheld the Court's final order with no right to pursue
21 further remedies or relief. In this regard, it is the intention of the Parties that the settlement shall
22 not become effective until the Court's order approving the settlement is completely final and there
23 is no further recourse by an appellant or objector who seeks to contest the settlement. (Exhibit 1 at
24 Section I, Paragraph 15, Page 3).

25 **ii. Disbursement of the GSA**

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

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Each of the Class Participants shall receive a pro rata share of the Net Settlement Amount. Pro rata shares shall be determined by, first, determining the value of a single Week Worked by dividing the Net Settlement Amount by the total number of Weeks Worked by all Class Participants during the Class 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 Class Participant during the Class Period.

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

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

For the purpose of calculating applicable taxes for the payment of the Individual Settlement Amounts paid to Class Participants and PAGA Aggrieved Individuals, the Parties agree that 100%

1 of the Individual Settlement Amounts will be paid on a 1099 basis and will not be subject to tax
2 withholding. The Settlement Administrator shall be responsible for issuing and providing
3 Form 1099s to Class Participants and PAGA Aggrieved Individuals for their Individual Settlement
4 Amounts. (Exhibit 1 at Section III, Paragraph 6, Pages 12-13).

5 **F. Class Members Will Automatically Receive a Settlement Payment**

6 Class Participants will automatically receive their share of the Settlement without needing
7 to submit a claim form.

8 **G. There is No Reversion to Defendants**

9 The Gross Settlement Amount is non-reversionary. No portion of the Gross Settlement
10 Amount will revert to URS for any reason. (*See* Exhibit 1 at Section I, Paragraph 19, Page 4).

11 **2. Settlement Administration**

12 **A. Proposed Settlement Administrator**

13 The Parties have selected Phoenix Class Action Administration Solutions (“Phoenix”) to
14 be the settlement administrator. (*See* Exhibit 1 at Section I, Paragraph 38, Page 7). Plaintiffs
15 requested quotes from three administration companies: Phoenix; ILYM Group, Inc.; and
16 Simpluris. The methods of notice proposed are U.S. mail and email as URS has contact information
17 for all Class Members. Phoenix’s quote for the administration process is a not-to-exceed total of
18 \$9,000. (*See* Exhibit 2 attached to the Mara Dec.). ILYM Group, Inc.’s quote for the administration
19 process is not-to-exceed total of \$29,000. (*See* Exhibit 3 attached to the Mara Dec.). Simpluris’
20 quote for the settlement administration process is not-to-exceed total of \$12,000. (*See* Exhibit 4
21 attached to the Mara Dec.).

22 The Parties believe that Phoenix is the best administrator for this case based on their prior
23 experience using Phoenix for the settlement administration process in other cases. In addition,
24 Phoenix provided the lowest bid for the settlement administration process in this case, meaning
25 that more of the Net Settlement Amount will be available for Class Participants. It should also be
26 noted that Phoenix was previously retained in this case to mail the *Belaire-West* notice and the
27 Notice of Pendency of Class Action to Class Members.

1 The Settlement Administration Costs will be paid out of the Gross Settlement Amount. If
2 Phoenix's actual expenses or the amount awarded is less than the amount allotted in the Joint
3 Stipulation, the difference shall become part of the NSA and be available for distribution to Class
4 Participants.

5 Plaintiffs' Counsel, Mara Law Firm, PC, has used Phoenix to administer settlements in 22
6 cases in the last two years. (*See* Mara Dec. ¶ 61). Plaintiffs' Counsel, Hunter Pyle Law, has used
7 Phoenix in one case to administer a settlement in the last two years. (*See* Pyle Dec. ¶ 19).

8 **B. The Settlement Administrator's Procedures**

9 As set forth in the declaration from Phoenix filed herewith, Phoenix has adequate
10 procedures for securely handling class member data. (*See* Declaration of Jodey Lawrence of
11 Phoenix Settlement Administrators in Support of Preliminary Approval of Class Action Settlement
12 ¶¶ 9-11). Phoenix also accepts responsibility for such data and maintains insurance in case of
13 errors. (*Id.* ¶ 11). In addition, Phoenix complies with items set forth in the Northern District Data
14 Protection Checklist. (*Id.* ¶ 9-10).

15 As noted above, Phoenix's quote for the administration process is a not-to-exceed total of
16 \$9,000. This cost is reasonable in relation to the value of the settlement as it is only 0.12% of the
17 GSA. The settlement administration costs will come out of the GSA.

18 **3. Notice**

19 **A. The Proposed Class Notice**

20 The Parties' proposed Class Notice is attached to the Joint Stipulation as Exhibit 1. The
21 Class Notice will be sent to Class Members in English. All Class Members signed Independent
22 Contractor Service Agreements with URS in English. As such, all Class Member should be able
23 to read and understand the Class Notice in English. The proposed Class Notice includes Class
24 Counsel's contact information so Class Members can contact them with any questions they have.
25 (*See* Class Notice at Section 16, Page 7). The proposed Class Notice also includes the address of
26 the settlement website that will be maintained by the Settlement Administrator. (*See* Class Notice
27 at Section 24, Page 9). The settlement website will include relevant documents such as the Second
28

1 Amended Complaint, the settlement approval motions, the Court's orders granting settlement
2 approval, and the Class Notice. (Exhibit 1 at Section V, Paragraph 1, Page 18).

3 The proposed Class Notice includes instructions on how to access the case docket via
4 PACER or in person at any of the Court's locations. (See Class Notice at Section 24, Page 9). The
5 proposed Class Notice also includes the date and time of the final approval hearing and states that
6 the date may change without further notice to the Class. (See Class Notice at Section 19, Page 8).

7 **B. Notice Distribution Process**

8 URS shall provide a Class List to the Settlement Administrator, as well as to Class Counsel,
9 within fourteen (14) days after entry and service of an Order Granting Preliminary Approval of
10 this Settlement. The Class List will contain the information URS has in its files reflecting Class
11 Members' names, Social Security numbers, last-known addresses, phone numbers, and email
12 addresses, and contract lease and termination dates. (Exhibit 1 at Section V, Paragraph 2, Page
13 18). Within 14 days after the Settlement Administrator receives the Class List from URS, the
14 Settlement Administrator will first update all addresses using the National Change of Address
15 System (NCOA) and then mail to all Class Members, via first-class U.S. mail, the Class Notice.
16 At the same time, the Settlement Administrator will also email the Notice Packet to all Class
17 Members for whom Defendant has email addresses. (Exhibit 1 at Section V, Paragraph 4, Page
18 19). After notices are mailed, Class Members will have sixty (60) days to respond to the settlement.
19 Class Members may respond to the settlement by requesting to be excluded from it or objecting to
20 it. Class Members can also file a dispute as to the number of workweeks attributed to them.

21 In the event of returned or non-deliverable Notices, the Settlement Administrator will make
22 reasonable efforts, including skip-tracing services offered by publicly available databases, to locate
23 Class Members and re-send the Notice Packet. If the Settlement Administrator is not able to find
24 a more accurate address through its skip-tracing efforts, the Settlement Administrator will call the
25 Class Member's last known phone number in an attempt to obtain an accurate address. If the
26 Settlement Administrator is unable to obtain an accurate address for a Class Member, the
27 Settlement Administrator shall provide Class Counsel with the name of the Class Member so Class
28 Counsel can perform a TLO search in an attempt to obtain an accurate address for the Class

1 Member. (Exhibit 1 at Section V, Paragraph 5, Page 19).

2 In addition, the Settlement Administrator will also host a settlement website that will
3 include, among other relevant documents, the Class Notice. (*See* Exhibit 1 at Section V, Paragraph
4 1, Page 18).

5 Here, URS has contact information for all Class Members. In fact, when the Notice of
6 Pendency of Class Action was mailed to Class Members, only two notices were returned as
7 undeliverable. The Class Notice should similarly reach nearly all, if not all, of the Class Members
8 as it is being sent by U.S. Mail and email. Class Members can also obtain the Class Notice through
9 the settlement website. The envelope the Class Notice will be mailed in is designated to enhance
10 the chance that it will be opened. (*See* Exhibit 1 to the Joint Stipulation).

11 **4. Opt-Outs**

12 The Notice of Class Action Settlement will notify all Class Members of their right to Opt-
13 Out of the Class portion of the Settlement. It will also instruct Class Members who wish to Opt-
14 Out of the Class portion of the Settlement to send to the Settlement Administrator a letter setting
15 forth their name, information needed to be properly identified, and their desire to Opt-Out of the
16 Class portion of the Settlement. (Exhibit 1 at Section V, Paragraph 9, Pages 21-22).

17 For a Class Member to request exclusion from the Class portion of the Joint Stipulation,
18 the Opt-Out Request must be mailed to the Settlement Administrator and postmarked no later than
19 the Opt-Out Deadline. Any returned envelopes containing the Class Notice from the initial mailing
20 which have forwarding addresses will be used by the Settlement Administrator to locate Class
21 Members. In the event that, prior to the Opt-Out Deadline, any Class Notice mailed to a Class
22 Member is returned as having been undelivered by the U.S. Postal Service, the Settlement
23 Administrator shall perform a skip trace search and seek an address correction for such Class
24 Member(s), and a second Class Notice will be sent to any new or different address obtained. In
25 such instance, the Opt-Out Request must be postmarked no later than 14 days after the Opt-Out
26 Deadline. (Exhibit 1 at Section V, Paragraph 9, Pages 21-22).

27 **5. Objections**

28 The Class Notice shall inform Class Members of their right to object to the Settlement.

1 Any Class Member who wishes to object to the Settlement must send a written objection to the
2 Court no later than the Objection and Opt-Out Deadline. The date of delivery of the written
3 objection is deemed to be the date the objection is deposited in the U.S. mail, postage prepaid, as
4 evidenced by the postmark. The objection must include the case name and number and must set
5 forth, in clear and concise terms a statement of the reasons why the objector believes that the Court
6 should find that the proposed Settlement is not in the best interest of the Class and the reasons why
7 the Settlement should not be approved, including the legal and factual arguments supporting the
8 objection. The objection must state whether it applies only to the objector, to a specific subset of
9 the class, or to the entire class. (Exhibit 1 at Section V, Paragraph 10, Pages 22-23).

10 If an objector also wishes to appear at the Final Approval Hearing, in person or through an
11 attorney, he or she must *also* file a notice of their intention to appear at the same time as the
12 objection is filed. Unless otherwise ordered by the Court, Class Members shall not be entitled to
13 speak at the Final Approval Hearing unless they have submitted a timely written objection and
14 notice of intention to appear pursuant to this Section. Class Members who have properly and timely
15 submitted objections may appear at the Final Approval Hearing, either in person or through a
16 lawyer retained at their own expense. (Exhibit 1 at Section V, Paragraph 10, Pages 22-23).

17 **6. Attorneys' Fees and Costs**

18 Subject to Court approval, Plaintiffs' Counsel shall request an award of attorneys' fees in
19 an amount of \$1,875,000 (25% of the GSA). This includes work remaining in documenting the
20 settlement, securing Court approval, ensuring the settlement is fairly administered, and obtaining
21 dismissal of the action.

22 Also, subject to Court approval, Plaintiffs' Counsel shall request a reimbursement from the
23 GSA for actual litigation costs in an amount not to exceed \$50,000. Plaintiffs will only seek the
24 amount of actual costs incurred during the litigation of this case. Should the actual costs exceed
25 \$50,000, Plaintiffs will only seek reimbursement of costs up to \$50,000. If the actual costs are less
26 than the \$50,000 cap, the remainder will become part of the NSA, distributable to Class
27 Participants. At present, Counsel have incurred approximately \$27,102.08 in costs to litigate this
28 matter. (*See* Mara Dec. ¶ 62; Pyle Dec. ¶ 21).

Class Counsel will also move the Court for a fee award in conjunction with final approval. Class Counsel will file a motion for attorneys' fees and costs no later than 35 days prior to the Opt-Out and Objection Deadline. At that time, Class Counsel intends on requesting 25% of the GSA as their fee award, which is in line with the federal benchmark for such awards. Class Counsel will submit a fee motion, supporting their request for 25% of the GSA – which is \$1,875,000 – including a lodestar crosscheck, hours, and hourly rates. At present, Counsel have worked 1,874.9 hours, incurring a \$1,299,565 lodestar. (*See* Mara Dec. ¶ 63; Pyle Dec. ¶ 22). As such, Class Counsel anticipates seeking a 1.46 multiplier at final approval. At final approval, Class Counsel will provide support for their anticipated multiplier.

7. Service Awards

No service awards are being sought. As Plaintiffs are not being provided any additional compensation above and beyond what they are entitled to as Class Members and/or PAGA Aggrieved Individuals, Plaintiffs are being treated the same as every other Class Member and are not receiving any preferential treatment under the settlement.

8. Cy Pres Awardees

There is no cy pres awardee in this case. Rather, funds from uncashed checks will be sent to the California State Controller – Unclaimed Property Division, with the identity of the Class Participant to whom the funds belong. (*See* Exhibit 1 at Section IV, Paragraph 5, Page 16). That allows Class Members who do not cash their settlement checks to collect their settlement funds at a later date from the California State Controller. If there are any leftover funds from attorneys' fees or costs or settlement administration costs, these funds will be added to the Net Settlement Amount for distribution to Class Participants.

9. Timeline

Plaintiffs propose the following timeline:

Preliminary Approval Hearing	Thursday, October 5, 2023, at 2:00 p.m.
Class List due to the Settlement Administrator	October 19, 2023 (14 days after entry and service of an Order Granting Preliminary Approval of the Settlement)

1	Settlement Administrator's Deadline to Mail and Email Class Notices	November 2, 2023 (14 days after the Settlement Administrator receives the Class List)
2	Settlement Administrator's Deadline to Set Up Settlement Website	November 2, 2023
3	Plaintiffs' Deadline to File Motion for Attorneys' Fees and Costs	November 27, 2023 (35 days prior to the response deadline)
4	Deadline for Class Members to Respond to the Settlement	January 1, 2023 (60 days after Notices are mailed and emailed)
5	Deadline for Class Members to with Remailed Notices to Respond to the Settlement	January 15, 2023 (Additional 14 days for remailed Notices)
6	Plaintiff's Deadline to File Final Approval Motion	January 22, 2023 (35 calendar days prior to the Final Approval/Fairness Hearing)
7	Proposed Final Approval/Fairness Hearing	Thursday, February 29, 2024, at 2:00 p.m.

10. Class Action Fairness Act (CAFA) and Similar Requirements

A. Class Action Fairness Act Notice

Notice of the Joint Stipulation is required to be served by URS with the appropriate federal and state agencies as required by 28 U.S.C. § 1715(b). (Exhibit 1 at Section I, Paragraph 3, Page 1). Within ten (10) days of receiving notice of filing of a Motion for Preliminary Approval of this Stipulation, Defense Counsel shall serve the CAFA Notice of this Stipulation on the appropriate federal and state officials, as required by 28 U.S.C. § 1715(b). (Exhibit 1 at Section V, Paragraph 11, Page 23).

B. Notice to the LWDA

On February 10, 2020, Plaintiff Clemons provided notice to the LWDA in accordance with the PAGA. On May 17, 2023, Plaintiffs Bejar and Chavez filed an amended PAGA letter with the LWDA. (Pyle Dec. ¶ 20).

11. Comparable Outcomes¹⁷

A. *Marvin Nash v. Horizon Freight System, Inc.*

The case *Nash v. Horizon Freight System, Inc.* (Northern District of California Case No. 3:19-cv-01883-VC) involved similar claims to the case here. Similar to here, the *Nash* case involved allegations that the defendant misclassified the plaintiff and other drivers as independent

¹⁷ Both of these settlements occurred prior to the Ninth Circuit's opinion in *Bowerman v. Field Asset Services, Inc.*, 60 F.4th 459 (9th Cir. 2023).

contractors, instead of employees. The released class claims in the *Nash* settlement include:

[A]ll claims, demands, rights, liabilities and causes of action against the Released Parties (as defined below) for any type of relief and penalties, that (1) accrued at any time during February 22, 2015 to the date of the Court's preliminary approval of this Agreement for the Settlement Class, and that (2) were or could have been alleged based on the facts and allegations made in Plaintiff's operative First Amended Class Action Complaint, including but not limited to misclassification of Plaintiff and class members, failure to provide meal breaks or provide compensation for missed meal breaks, failure to authorize and permit rest breaks or provide compensation for missed rest breaks, failure to pay unpaid wages, failure to reimburse Plaintiff and class members for work-related expenses, failure to provide accurate wage statements, failure maintain accurate payroll records showing hours worked daily and wages earned, failure to pay Plaintiff and class members all wages when due, failure to pay Plaintiff and class members all wages due at the time of termination, taking deductions from compensation, unfair business practices, violation of the Labor Code and Industrial Welfare Commission Wage Orders and for PAGA penalties and other associated penalties. The release does not extend to any claims that were not or could not have been alleged in the operative First Amended Class Action Complaint based on the facts and allegations made therein and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, discrimination, retaliation, and harassment including but not limited to those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment.

Below is a chart that compares the *Nash* settlement to the proposed settlement in this case:

	The <i>Nash</i> Settlement	This Proposed Settlement
Total Settlement Fund	\$3,000,000	\$7,500,000
Total No. of Class Members	137	319
Total No. of Class Members to Whom Notice Was Sent and Not Returned as Undeliverable	137	Unknown at this time
Method(s) of Notice	U.S. mail	U.S. mail and email
No. and Percentage of Claim Forms Submitted	Not applicable	Not applicable
Average Recovery Per Class Member	\$12,397.06	\$17,017.79
Amount of Uncashed Checks	\$107,045.21; Funds from uncashed checks were sent to the California State Controller's Office –	Amount of uncashed checks is unknown at this time. Funds from uncashed checks will be sent to the California State Controller's

	Unclaimed Property Fund.	Office – Unclaimed Property Fund.
Administrative Costs	\$9,000	Up to \$20,000
Attorneys’ Fees and Costs	\$990,000 in fees and \$300,000 in costs	\$1,875,000 in fees and up to \$50,000 in actual costs
Total Exposure if Plaintiffs and the Class Prevailed	\$13,709,690	\$92,667,754

B. Ron Carter, et al. v. XPO Last Mile, Inc.

The case *Carter v. XPO Last Mile, Inc.* (Northern District of California Case No. 3:16-cv-01231-WHO) involved similar claims to the case here. Similar to here, the *Carter* case involved allegations that the defendant misclassified the plaintiff and other drivers as independent contractors, instead of employees. The released class claims in the *Carter* settlement include:

Release of Claims by Settlement Class Members. Upon the Effective Date, all Settlement Class Members shall fully, finally, irrevocably, unconditionally, and forever release, and discharge XPO LM and Defendant Releasees or any of them, from all claims, actions, causes of action, administrative claims, demands, debts, damages, penalties, costs, interest, attorneys’ fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, which: (i) are owned or held by Settlement Class Members and/or by their affiliated business entities (if any), or any of them, as against Defendant Releasees, or any of them; and (ii) which were asserted in Plaintiffs’ Operative Complaint or, whether or not asserted, which could have been asserted in this Action arising out of the factual allegations set forth in the Operative Complaint and that are related to, or arise from, the employment classification of the Settlement Class at law or in equity by XPO LM during the Class Period under the statutory or common law of California and/or any local law, statute, ordinance or regulation within the State of California.

The Released Claims include, without limitation, all rights and claims under California wage payment laws and wage and hour related claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever for wages, benefits, taxes, compensation, damages, costs, penalties, liquidated damages, treble damages, punitive damages, interest, attorney fees, litigation costs, restitution, equitable relief, or other relief, and any claims of alleged unjust and/or improper (1) classification as an independent contractor and/or non-employee exempt from state minimum wage and/or overtime laws, or any other alleged misclassification under state laws or any alleged misclassification related to other employment-related claims; (2) deductions from compensation and/or wages; (3) failure to pay minimum wages; (4) failure to provide proper pay stubs or other records related to hours worked, wages earned, and/or payroll deductions; (5) failure to pay, indemnify, and/or reimburse for work-related expenses; (6) failure to pay all wages when due; (7) failure to calculate and/or pay overtime compensation; (8) failure to keep and maintain any records required to be kept or maintained under state wage and hour laws; (9) retaliation; and/or (10) enrichment in any manner of Defendant by any conduct alleged or that could have been alleged in this Action. This release specifically includes, but is not limited to claims under California Labor Code, California Code of Civil Procedure, California Business &

Professions Code, and California's Labor Code Private Attorneys General Act of 2004, and any applicable IWC Wage Order.

Below is a chart that compares the *Carter* settlement to the proposed settlement in this case:

	The <i>Carter</i> Settlement	This Proposed Settlement
Total Settlement Fund	\$16,500,000	\$7,500,000
Total No. of Class Members	833	319
Total No. of Class Members to Whom Notice Was Sent and Not Returned as Undeliverable	812	Unknown at this time
Method(s) of Notice	U.S. mail and email	U.S. mail and email
No. and Percentage of Claim Forms Submitted	Not applicable	Not applicable
Average Recovery Per Class Member	\$14,471.19 for Rule 23 class members plus \$1,388.39 for individuals included in the FLSA collective action	\$17,017.79
Amount of Uncashed Checks	\$0	Unknown at this time
Administrative Costs	\$50,000	Up to \$20,000
Attorneys' Fees and Costs	\$4,125,000 in fees and costs	\$1,875,000 in fees and up to \$50,000 in actual costs
Total Exposure if Plaintiffs and the Class Prevailed	Approximately \$83,000,000	\$92,667,754

V. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement, enter the proposed preliminary approval order submitted herewith, and set a final approval hearing date.

Dated: August 31, 2023

MARA LAW FIRM, PC

/s/ David Mara

David Mara, Esq.

Jill Vecchi, Esq.

Representing the Class

Dated: August 31, 2023

HUNTER PYLE LAW

/s/ Hunter Pyle

Hunter Pyle, Esq.

Andrea A. Núñez, Esq.

Representing the Class