

1 Taras Kick (SBN 143379)
Taras@kicklawfirm.com
2 Greg Taylor (SBN 315128)
Greg@kicklawfirm.com
3 THE KICK LAW FIRM, APC
815 Moraga Drive
4 Los Angeles, California 90049
Telephone: (310) 395-2988
5 Facsimile: (310) 395-2088

6 Attorneys for Plaintiff Dmytro Martyniuk,
individually, and on behalf of all others
7 similarly situated and aggrieved

8
9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**
10 **CENTRAL DISTRICT — SPRING STREET COURTHOUSE**

11 DMYTRO MARTYNIUK, individually, and
on behalf of all others similarly situated and
12 aggrieved,

13 Plaintiff,

14 vs.

15 USKO EXPRESS, INC., a California
corporation; and DOES 1 through 100,
16 inclusive,

17 Defendants.

Case No.: 20STCV07379

*[Assigned for all purposes to the Hon. Yvette M.
Palazuelos, Dept. 9]*

COMPLEX CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT; PROOF OF
SERVICE**

Date: June 29, 2023
Time: 10:00 a.m.
Dept: 9

[Filed concurrently with Declaration of Taras
Kick in Support of Plaintiff's Motion for Final
Approval; Declaration of Lindsay Kline
Regarding Notice and Settlement Administration]

Complaint filed: February 26, 2020
FAC filed: May 11, 2022
Trial date: None set

1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS:**

2 **PLEASE TAKE NOTICE** that on June 29, 2023, at 10:00 a.m. in Department 12 of this Court,
3 or as soon thereafter as the matter as the matter may be heard, Plaintiff Dmytro Martyniuk (“Plaintiff”)
4 respectfully moves this Court for an order that:

5 1. Finally approves of the proposed class action settlement described herein and as set forth
6 in the parties’ Settlement and Release Agreement (“Settlement,” “Settlement Agreement,” or “SA”),
7 on the grounds that the Settlement is fair, reasonable and adequate for all Class Members;

8 2. Finally certifies and binds the Class for settlement purposes only;

9 3. Finds that the Court-approved Class Notice distributed to the Settlement Class pursuant
10 to the Court’s January 27, 2023, Order granting preliminary approval constituted the best notice
11 practicable under the circumstances;

12 4. Orders Defendant USKO Express, Inc. to remit payment of \$1,550,000.00 to the
13 Settlement Administrator;

14 5. Orders the Settlement Administrator to distribute \$45,000.00 to the California Labor and
15 Workforce Development Agency (“LWDA”) for penalties pursuant to the Labor Code Private
16 Attorneys General Act of 2004 (“PAGA”), and to distribute \$15,000.00 in PAGA penalties to
17 Aggrieved Employees;

18 6. Approves Class Counsel’s Attorneys’ Fees Award in the amount of \$516,667 or one-third
19 (33-1/3%) of the total recovery and \$9,324.64 for reimbursement of costs incurred by Class Counsel in
20 connection with the prosecution of this action, and to distribute \$10,900.00 in Settlement
21 Administration Costs to itself, Simpluris, Inc., and,
22

23 7. Approves the award of \$10,000.00 to Plaintiff Dmytro Martyniuk as a Class
24 Representative Service Award for his time and effort in representing the Class and orders the Settlement
25 Administrator to distribute the award to Plaintiff Martyniuk.

26 Plaintiff shall also request that this Court enter a Final Judgment, which includes a provision
27 for this Court’s retention of jurisdiction over the parties to enforce the terms of the judgment.

28 This Motion is made pursuant to Rules of Court, Rules 3.764, 3.766, and 3.769, and Code of
29 Civil Procedure section 382, and is based on this Notice, the attached Memorandum of Points and

1 Authorities, the accompanying Declaration of Taras Kick (“Kick Decl.”) and exhibits thereto, the
2 Declaration of Lindsay Kline Regarding Notice and Settlement Administration (“Kline Decl.”), the
3 complete files and records of this case, and any other evidence or oral argument which may be
4 considered by the court at the time of the hearing.

5 Dated: June 6, 2023

Respectfully submitted,
THE KICK LAW FIRM, APC

8 By: /s/ Taras Kick
9 Taras Kick
10 Greg Taylor
11 Attorneys for Plaintiff
12 Dmytro Martyniuk and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY**

3 Plaintiff Dmytro Martyniuk (“Plaintiff”) seeks final approval of this trucker wage-and-hour
4 class action settlement between himself and Defendant USKO Express, Inc. and its affiliated persons
5 and entities (collectively, “Defendants”) in the gross non-reversionary amount of \$1,550,000.00, for a
6 Settlement Class of 629 individuals.

7 After engaging in a private mediation with an experienced mediator, The Honorable Lisa Hart
8 Cole (Ret.), the Parties ultimately reached the proposed Settlement. (See, concurrently filed Declaration
9 of Taras Kick [“Kick Declaration”], ¶ 17.) A true and correct copy of the fully executed Settlement and
10 Release Agreement (“Settlement,” “Settlement Agreement,” or “SA”) is attached as **Exhibit 1** to the
11 Kick Declaration. On May 9, 2022, Plaintiff filed his Motion for Preliminary Approval. (*Id.*, ¶ 18.) On
12 July 27, 2022, and again on January 11, 2023, this Court ordered certain revisions, which the parties
13 accomplished. (*Id.*) Plaintiff then filed the revisions and supplemental briefing requested by the Court
14 on December 21, 2022, and on January 9, 2023. (*Id.*) On January 20, 2023, Plaintiff provided the Court
15 with a copy of the fully executed revised Settlement Agreement. (*Id.*, Ex. 1.) This Court then granted
16 preliminary approval in an Order dated January 27, 2023, and conditionally certified the following
17 Settlement Class: “All current and former drivers, including but not limited to those misclassified as
18 independent contractors or “owner operators,” who performed work for Defendant in the State of
19 California or who were residents of the State of California and performed work for Defendant in any
20 state at any time from February 26, 2016 through May 23, 2022.” (*See* Order Granting Preliminary
21 Approval of Class and PAGA Representative Action Settlement [“Preliminary Approval Order”], ¶
22 II.A.)

23 The Court found preliminarily that the Settlement is fair, adequate, and reasonable. (Preliminary
24 Approval Order, ¶ III.B.8.) The Court noted that the Settlement was reached through arm’s-length
25 bargaining and that sufficient investigation and discovery were conducted prior to mediation to allow
26 counsel to act intelligently. (*Id.*, ¶¶ III.A.1-3.) The Court also noted that the Settlement amount is within
27 the ballpark of reasonableness in light of Defendant’s estimated maximum potential damages. (*Id.*, ¶
28 III.B.4.) The Court found that the class may be conditionally certified because the prerequisites of class
29 certification have been satisfied. (*Id.*, ¶ III.D.)

1 In its Order, the Court also noted that the content of the revised proposed Notice to Class
2 Members, attached to the settlement as Exhibit A, appears to be acceptable (*Id.*, ¶ III.E.1.), and, directed
3 the Settlement Administrator to carry out its duties as specified in the Settlement, including providing
4 Notice to the Class in both English and Russian. (*Id.*)

5 Plaintiff can now report that the notice program ordered by this Court has been very successful,
6 and Plaintiff therefore presents the matter for final approval. As evidenced by the concurrently filed
7 Declaration of Lindsay Kline of the settlement administrator Simpluris, Inc., there was a successful
8 deliverable rate of 99.5%. (Declaration of Lindsay Kline Regarding Notice and Settlement
9 Administration, dated May 18, 2023 [“Kline Decl.”], ¶¶ 8-9.)

10 Further, not a single class member has objected to any aspect of the proposed settlement, and
11 not a single Class Member has elected to opt out of the proposed Settlement being presented to this
12 Court for final approval. (*Id.*, ¶¶ 10-12.) Finally, only one mileage dispute was received, which was
13 resolved in favor of the class member. (*Id.*, ¶ 13.) Therefore, if these numbers do not change, if this
14 Court approves the proposed Settlement in full, the 629 Settlement Class Members will be paid their
15 portion of the Net Settlement Amount averaging \$1,499.87 per Class Member, including a highest
16 estimated payment of \$12,079.60. (*Id.*, ¶¶ 14-16.) This is in addition to 253 Aggrieved Employees
17 receiving their proportionate share of \$15,000.00 in PAGA penalties, with an estimated average
18 Individual PAGA Payments of \$59.29 and the highest estimated award of \$187.79. (*Id.*, ¶ 17.)

19 In sum, the proposed settlement of this class action is an excellent result for class members, and
20 Class Members’ reaction to it to date has been overwhelmingly positive. For these reasons, and per the
21 points and authorities below, Plaintiff respectfully requests this Court enter a Final Approval Order and
22 an accompanying Final Judgment that: (1) finally approves the Settlement; (2) finally certifies and
23 binds the Class to the Settlement; (3) directs payments to Participating Class Members and Aggrieved
24 Employees; (4) directs payments to the Settlement Administrator; (5) directs payment to Plaintiff; and
25 (6) directs payments to Class Counsel in accordance with the Settlement terms.

26 **II. FACTUAL AND PROCEDURAL BACKGROUND**

27 **A. Factual Background**

28 This is a trucker misclassification wage-and-hour lawsuit. Plaintiff Dmytro Martyniuk is a truck
29 driver who drives for Defendant USKO within the State of California. (See Declaration of Dmytro

1 Martyniuk filed in support of motion for preliminary approval [“Martyniuk MPA Decl.”], ¶ 3-5.)
2 USKO is a California-headquartered commercial transportation company. (Kick Decl., ¶ 11.)¹ Plaintiff
3 brings this action on behalf of himself and a class of 629 similarly situated non-exempt commercial
4 truck drivers in California, alleging that he and his fellow Class members and aggrieved employees
5 were deprived of certain rights afforded to them by the Labor Code during their employment with
6 Defendants.

7 **B. Procedural History**

8 On February 24, 2020, pursuant to Labor Code § 2699.3, former plaintiff Matthew Hallowell,
9 submitted notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendant
10 USKO Express, Inc., LWDA Case No. LWDA-CM-774505-20, of his intention to litigate various
11 alleged Labor Code violations. (Kick Decl., ¶ 10, Ex. 2.)

12 On February 26, 2020, Plaintiff filed this putative class action on behalf of himself and others
13 similarly situated. On May 11, 2022, Plaintiff filed the First Amended Complaint (“FAC”). (*Id.*, ¶ 11.)
14 Plaintiff’s FAC alleges the following causes of action: (1) Failure to Provide Required Meal Periods;
15 (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Minimum Wage; (4) Failure to Pay All
16 Wages Due to Discharged or Quitting Employees; (5) Failure to Furnish Accurate Itemized Wage
17 Statements; (6) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of
18 Duties; (7) Unlawful Deductions from Wages; (8) Unfair and Unlawful Business Practices in violation
19 of Bus & Prof. Code § 17200, *et seq.*, and (9) violation of PAGA, Lab. Code § 2698, *et seq.* Defendants
20 have denied and continue to deny Plaintiff’s allegations. (*Id.*)

21 On July 2, 2020, the parties agreed—with the Court’s approval—to stay the case pending the
22 Ninth Circuit’s determination regarding preemption of California’s meal and rest break requirements in
23 *International Brotherhood of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.* (“*Teamsters*”)
24 (9th Cir. 2021) 986 F.3d 841. While the action was stayed, without Class Counsel’s involvement or
25 knowledge, it was reported to Class Counsel that former plaintiff Mr. Hallowell had settled his
26

27
28
29 ¹ Former co-defendant JS Express, LLC is a small independent motor carrier company that contracted
with USKO. The Parties agreed to request dismissal of JS Express, LLC without prejudice, and the
Court entered its order dismissing JS Express, LLC on April 25, 2022.

1 individual claims with USKO. As a result, Class Counsel reported that to this Court, and initiated
2 discovery to seek a replacement representative. (Kick Decl., ¶ 12).

3 In March 2021, USKO filed a motion to dismiss, which Class Counsel opposed. The Court
4 granted the motion to dismiss in part and denied it in part, dismissing the meal and rest break claims in
5 light of *Teamsters*. Class Counsel formally moved for pre-certification discovery in efforts to locate a
6 new Class representative. Class Counsel filed a motion with this Court on this issue on May 26, 2021,
7 entitled Motion for Discovery of Class Contact Information. After that motion was fully briefed, but
8 before this Court ruled on it, the parties agreed the motion be stayed while they went to a mediation to
9 explore whether the matter can be resolved on a class basis. (Kick Decl., ¶ 13).

10 Prior to attending private mediation, Plaintiff gathered the facts and data necessary to reach a
11 fair and reasonable settlement, including by conducting extensive informal and formal discovery. (*Id.*,
12 ¶¶ 15-16.) (*Id.*) Among other things, Defendant produced a comprehensive representative sample of its
13 non-exempt employees' timekeeping and payroll records with sufficient information for Plaintiff to
14 conduct a damage analysis. (*Id.*) Class Counsel retained an expert to analyze this data which was used
15 as a damages model for the mediation. (*Id.*) Class Counsel carefully considered the class claims at issue
16 and its expert's analysis of violation rates for Defendant's sample of time and payroll data. Based on
17 this work, Class Counsel was able to act intelligently and effectively in negotiating the proposed
18 Settlement. (*Id.*)

19 Based on good faith meet and confer efforts, the Parties agreed to proceed to mediation with
20 the Hon. Lisa Cole (Ret.) of Signature Resolution. (*Id.*, ¶ 17.) On November 12, 2021, the Parties
21 attended a neutral mediation with Judge Cole. (*Id.*) Through extensive arm's-length negotiations with
22 the assistance of Judge Cole, the parties ultimately reached a settlement in principle. (*Id.*) The parties
23 thereafter drafted and executed a long-form settlement agreement. (*Id.*)

24 On April 25, 2022, the parties filed a Joint Stipulation for Leave to Substitute Class
25 Representative and Amend Complaint to add Dmytro Martyniuk ("Plaintiff") as the proposed class
26 representative, and file the FAC. (Settlement, § II. D). The Court granted the request, and entered its
27 order on April 25, 2022. (Kick Decl., ¶ 14.) Plaintiff filed the FAC on May 11, 2022. (*Id.*)

28 On May 9, 2022, Plaintiff filed a Motion for Preliminary Approval of Class and PAGA Action
29 Settlement and supporting documents. (*Id.*, ¶ 18.) The Court ordered the parties to make certain

1 revisions and file supplemental papers in support of final approval on July 27, 2022, and again on
2 January 11, 2023. (*Id.*) The parties made each of the requested revisions, and Plaintiff filed
3 supplemental briefing along with a fully executed revised Settlement Agreement and revised proposed
4 Class Notice. (*Id.*)

5 On January 27, 2023, the Court entered the Order Granting Preliminary Approval of Class and
6 PAGA Representative Action Settlement (“Preliminary Approval Order”), preliminarily approving the
7 terms of the Settlement Agreement, the Class Notice, and the proposed administration procedures and
8 associated deadlines. (*Id.*, ¶ 19.)

9 Plaintiff now moves for final approval of the Settlement Agreement.

10 **III. SUMMARY OF PROPOSED SETTLEMENT AGREEMENT**

11 **A. Settlement Amount and Funding after Final Judgment**

12 Defendants have agreed to pay a gross settlement amount of \$1,550,000 to fund all payments
13 pursuant to the Settlement, including: Individual Settlement Payments for wages, penalties, and
14 interest; a proposed Class Representative Service Award, subject to Court approval; Attorneys’ Fees
15 and Costs to Class Counsel, as approved by this Court; Settlement Administration Costs; and an
16 allocation for penalties under PAGA (the “PAGA Penalties”). (SA, ¶ V.A.1.) Furthermore, Class
17 Members are not required to submit a claim form, and there is no reversion of any residual funds to
18 Defendants. (*Id.*) Defendants will deposit the GSA with the Settlement Administrator within 21 days
19 of the Effective Date. (SA, ¶ VIII.B.2.) Defendants will separately pay the employer’s payroll tax
20 obligations on the wage portion of Individual Settlement Payments in addition to the GSA. (*Id.*)

21 **B. No-Claim Form Settlement Binding on Parties.**

22 Class Members and Aggrieved Employees will not be required to submit claim forms to receive
23 Individual Class Settlement Payments or Individual PAGA Payments. (SA, ¶ VII.E.)

24 **C. Release.**

25 Upon the date on which Defendants fully fund the Settlement, Plaintiff and Participating Class
26 Members shall be deemed to have settled and released the Released Parties of all Released Claims (SA,
27 ¶ VI.1.) The Release agreed to by the Parties does not contain any terms outside the scope of the Action
28 and are limited to those claims arising during the Class Period. (SA, ¶¶ VI.1-3.) The PAGA release
29 covers both Participating and Non-Participating Class Members who are Aggrieved Employees and

1 releases all claims for penalties pursuant to PAGA based on the Released Class Claims as alleged in
2 the PAGA Notice. (SA, ¶ VI.4.)

3 **D. Net Settlement Amount and Settlement Payments to Participating Class Members.**

4 The Net Settlement Amount (“NSA”) shall be calculated by deducting from the Gross
5 Settlement Amount the following: (i) Class Counsel’s attorneys’ fees and costs, (ii) the Class
6 Representative Service Award, (iii) the PAGA Penalties, and (iv) the Settlement Administration Costs.
7 (SA, ¶ I.22.) Each Participating Class Member will be entitled to payment of a pro rata portion of the
8 NSA based on the total number of miles each drove during the Class Period. (SA, ¶ V.E.)

9 The amount to be paid to each Class Member who does not opt out (“Participating Class
10 Member”) will be calculated by dividing the NSA by the total number of miles driven by all
11 Participating Class Members in California during the Class Period and then multiplying the result by
12 each Participating Class Member’s miles. (SA, ¶ VIII.D.) As stated in the concurrently filed Declaration
13 of Lindsay Kline, the Settlement Administrator has calculated the average estimated Individual
14 Settlement Payment to be \$1,499.87, and the highest estimated Individual Settlement Payment to be
15 \$12,079.60, after taking into account all proposed disbursements. (Kline Decl., ¶ 16.) Each Individual
16 Settlement Payment will be reported as 20% wages, 40% interest, and 40% penalties. (SA, ¶ VIII.E.4.)

17 **E. PAGA Payment to the LWDA and Aggrieved Employees.**

18 The PAGA allocation is \$60,000, with \$45,000, or 75%, payable to the Labor and Workforce
19 Development Agency (“LWDA”), and the remaining \$15,000, or 25%, to be distributed to Aggrieved
20 Employees on a pro rata basis, based on the number of miles that each Aggrieved Employee drove
21 between May 11, 2021, and May 23, 2022 (“the PAGA Period”). (SA, ¶ VIII.C.1.)

22 **F. Settlement Checks Void at 180 Days.**

23 No money will revert to Defendants under any circumstances. (SA, ¶ VIII.E.2.) If any Individual
24 Settlement Payment check remains uncashed after one hundred eighty (180) days from the date the
25 check is issued, such check(s) will be cancelled. (*Id.*) Thereafter, all funds from the uncashed or
26 undeliverable checks will be distributed to the California Controller's Unclaimed Property Fund in the
27 name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of Cal.
28 Code of Civ. Proc. section 384, subd. (b). (*Id.*)

IV. THE SETTLEMENT ADMINISTRATION PROCESS

On February 17, 2023, Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) received the Court-approved Notice of Class Action Settlement (“Class Notice”). (Kline Decl., ¶ 5.)

On February 13, 2023, Defense Counsel provided Simpluris with a mailing list (“Class List”) containing all Class Members’ contact information and dates of employment. The Class List contained data for 629 Class Members. (*Id.*, ¶ 6.) From the Class List, 253 individuals were identified as Aggrieved Employees who performed work for Defendants during the PAGA Period. (*Id.*, ¶ 17.)

The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. (*Id.*, ¶ 7.)

On March 9, 2023, Class Notice was mailed to 629 Class Members with addresses contained in the Class List via First Class mail or updated via the NCOA search. (*Id.*, ¶ 8.) Notice was sent in English and Russian. (*Id.*, ¶ 8.) A total of fifty (50) Class Notices were returned as undeliverable. (*Id.*, ¶ 9.) Of these, seven (7) were returned with forwarding addresses. (*Id.*) Simpluris performed an advanced address search (i.e., skip trace) on all of these addresses and was able to locate forty (40) updated addresses. (*Id.*) Simpluris promptly mailed a Class Notice to those updated addresses. (*Id.*) Ultimately, there are three (3) Class Notices that remain undeliverable, resulting in a highly successful delivery rate of 99.5%. (*Id.*)

The deadline for Class Members to opt out, submit written objections, or dispute miles was April 24, 2023. (*Id.*, ¶¶ 10-13.) Simpluris has received no opt-out requests and no objections to the Settlement. (*Id.*) One miles dispute was received and resolved in favor of the class member. (*Id.*)

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

“The trial court has broad discretion to determine whether the settlement is fair.” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581.)² The proponent of the settlement has the burden to

² “It should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement ... Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581.)

1 show that it is fair and reasonable. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)
2 “‘Ultimately, the [trial] court’s determination is nothing more than an ‘amalgam of delicate balancing,
3 gross approximations and rough justice.’” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)
4 A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining;
5 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
6 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*In re Microsoft*
7 *I-V Cases* (2006) 135 Cal.App.4th 706, 723; *7-Eleven Owners for Fair Franchising v. Southland Corp.*
8 (2000) 85 Cal.App.4th 1135, 1146.)

9 In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues
10 of fact and law that underlie the merits of the dispute. (*7-Eleven, supra*, 85 Cal.App.4th at 1146.) The
11 inquiry is not whether the settlement agreement is the best one that class members could have possibly
12 obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” (*Chavez v.*
13 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55.) A settlement need not obtain 100 percent of the damages
14 sought in order to be fair, reasonable, and ultimately, meaningful. (*Wershba, supra*, 91 Cal.App.4th at
15 251.) Even if the proposed settlement affords relief that is substantially narrower than it would be if the
16 case were to be successfully litigated, that is no bar to a class settlement because the public interest
17 may indeed be served by a voluntary settlement in which each side gives ground in the interest of
18 avoiding prolonged litigation. (*Id.*)

19 **A. The Settlement Resulted from Arm’s-Length Bargaining Based Upon Extensive**
20 **Investigation and Discovery**

21 The investigation and discovery conducted in this matter have been adequate to give the
22 Plaintiff and Class Counsel a sound understanding of the merits of their position, Defendant’s defenses,
23 and to evaluate the reasonable value range of the claims of the Class. (Kick Decl., ¶¶ 15-16, 26.) Prior
24 to mediation, Plaintiff received and reviewed hundreds of pages of data and documents, including Class
25 members’ driving logs, and a detailed sample of its non-exempt employees’ timekeeping and payroll
26 records. (*Id.*) Class Counsel retained an economic expert, Berger Consulting Group, to analyze this data
27 and prepare a damages model. (*Id.*) Class Counsel carefully considered its expert’s analysis of
28 Defendant’s time and payroll data. (*Id.*)

29 The Settlement was reached as a result of a neutral mediation with the Hon. Lisa Cole (Ret.),

1 on November 12, 2021. (*Id.*, ¶ 17.) With the assistance of Judge Cole, the Parties reached a settlement
2 in principle. Following that successful mediation, a long form agreement was drafted and executed by
3 counsel, who have extensive skill and experience litigating and settling similar wage and hour class
4 actions. (*Id.*, ¶¶ 3-4, 17.) Negotiations during and prior to reaching the Settlement were intensive, non-
5 collusive, and conducted at arm’s length. (*Id.*, ¶ 17.) Plaintiff and Class Counsel vigorously prosecuted
6 this case, and Defendant vigorously contested liability. (*Id.*) The Parties engaged in sufficient
7 investigation and discovery to assess the relative merits of Plaintiff’s claims and of Defendant’s
8 defenses to them. (*Id.*)

9 **B. The Risks Inherent in Continued Litigation and Individual Settlement Favor Final**
10 **Approval of the Settlement**

11 Had the Action not settled, Defendant would have challenged class certification and liability.
12 Defendant has vigorously asserted multiple defenses. Defendant disputes that it had *any* direct
13 relationship with the Class members—employee, independent contractor, or otherwise—and merely
14 acts as a broker between clients and independent motor carriers, which handle the driving and delivery.
15 (*Id.*, ¶ 28.) If Defendant were to prevail on this threshold defense, Plaintiff would be unable to recover
16 for his claims under the Labor Code and PAGA. (*Id.*) Moreover, due to the complex facts surrounding
17 the relationship between the Defendant and Class members, there was a reasonable risk of a factfinder
18 finding in favor of Defendant. Defendant already prevailed on its contention that Plaintiff’s claims for
19 meal and rest periods are preempted by the Federal Motor Carrier Safety Administration (“FMCSA”).
20 (*Id.*) Defendant could also argue Plaintiff’s claims for wage statement and waiting time penalties claims
21 are entirely derivative of Plaintiff’s rest period and wage claims, and therefore suffered from not only
22 the same litigation risks as the now-dismissed meal and rest break claims, but also additional risks
23 unique to these claims. (*Id.*)

24 Further, Plaintiff also faced the risk Defendant might successfully argue that they utilized a
25 piece-rate compensation scheme which was lawful under the California Supreme Court’s decision in
26 *Oman v. DeltaAir Lines, Inc.* (2020) 9 Cal.5th 762, which permitted translating contractual
27 compensation for tasks into an average hourly rate to meet minimum wage. (*Id.*; *See, e.g., Ayala v. US*
28 *Xpress*, 851 Fed.Appx. 53 (9th Cir. 2021) (applying the *Oman* decision to compensation of truck drivers
29 on a piece-rate basis).) (Kick Decl., ¶ 29.)

1 Additionally, Defendant contended that individualized questions of fact predominate over any
2 common issues, and these issues would pose challenges to certification. (*Id.*, ¶ 31.) For instance,
3 Defendant argued that drivers spent different amounts of time in California, resided in different states,
4 and that the determination of whether California law applied to each driver would give rise to hundreds
5 of individual inquiries. (*Id.*) Defendant further argued that variations in non-productive time spent by
6 each Class member could result manageability issues and result in individual issues predominating.
7 (*Id.*) Defendant would have likely argued again at trial, if any, that Plaintiff’s claims were not
8 appropriate for class-wide adjudication. On the other hand, Defendant also faced the risk of the Court
9 certifying a class and allowing a jury to decide Plaintiff’s claims on a class-wide basis. Additionally,
10 preparation for trial would have been expensive for all Parties. (*Id.*)

11 It is preferable to reach an early resolution of a dispute because such resolutions save time and
12 money that would otherwise go to litigation. Were litigation to proceed, there is a strong likelihood it
13 would be protracted and contentious, as Defendant disputes almost all aspects of Plaintiff’s claims. As
14 a threshold matter, if the Agreement is not approved, Plaintiff will have to prepare and file a motion
15 for class certification, which outcome is uncertain based on Defendant’s contentions, *inter alia*, that
16 Plaintiff’s claims are preempted, that Defendant’s compensation policy is lawful, that individual
17 questions of fact predominate, and that Plaintiff cannot show the “willfulness” requirement for Section
18 203 penalties. (*Id.*, ¶ 32.) If the motion were granted, Defendant would likely move for decertification,
19 file a petition for a writ of mandate of the certification, and move for Summary Judgment. (*Id.*) Plaintiff
20 believes he would prevail on the question of certification, but the risks to absent Class Members are
21 significant. (*Id.*)

22 To succeed on the merits, Plaintiff would have to prove that Defendant actually engaged in the
23 practices and policies alleged and that those practices and policies violated the law. While Class
24 Counsel believe strong evidence exists showing Defendant’s liability, there remains a risk that the trier
25 of fact might find otherwise. (*Id.*, ¶ 33.) If the case were to proceed to trial, additional discovery would
26 be needed and the Parties would thus incur significant additional expenses, which money could go
27 instead to fund a settlement for the benefit of the Class as a whole. (*Id.*) Moreover, discovery disputes
28 would have certainly arisen, which would have cost the Parties additional time and money. (*Id.*) Further,
29 regardless of which Party prevailed, appellate practice would likely ensue, further delaying any possible

1 recovery by Class Members including, if Plaintiff prevailed at trial, appeal after final judgment of the
2 class certification in Plaintiff's favor had it been granted. (*Id.*, ¶ 34.) In other words, both Parties would
3 likely incur substantial attorneys' fees and costs from continued litigation, likely approaching hundreds
4 of thousands of dollars. (*Id.*) In contrast, the Settlement provides real and significant benefits for the
5 Class Members here and now, while avoiding the further expenses, risks, and delay of prolonged
6 litigation with only the possibility of recovery.

7 Along with determining a well-defined community of interest, courts may also evaluate "the
8 probability that each class member will come forward ultimately to prove his or her separate claim to
9 a portion of the total recovery and whether the class approach would actually serve to deter and redress
10 alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Here, if absent Class
11 Members wished to seek individual legal redress from Defendant for their wage and hour claims by
12 filing suit on their own, they could have opted out of the Settlement. None did. (Kline Decl., ¶ 11.)
13 Moreover, individual litigation arising from similar operative facts unduly burden the courts and may
14 produce inconsistent results, which may be avoided here. The Settlement fund created may deter and
15 redress the wage-and-hour violations that Defendant is alleged to have committed.

16 It would be inefficient for such a large class of current and former employees to bring individual
17 actions to recover from Defendant for the alleged violations of wage-and-hour laws. Moreover, the
18 potential individual recovery that could be obtained by a Class Member would not be significant enough
19 to provide him or her with the incentive to sue. By granting final approval of the Settlement, the Court
20 can approve a resolution that provides a certain and substantial recovery for Class Members.

21 **C. The Proposed Settlement is Fair and Reasonable.**

22 A trial court has "broad discretion" to determine "whether a settlement [is] fair and reasonable."
23 (*Wershba, supra*, 91 Cal.App.4th at 234-235; *In re Cellphone Fee Termination Cases* (2010) 186
24 Cal.App.4th 1380, 1389.) A trial court should consider relevant factors, which may include the strength
25 of a plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of
26 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
27 completed and the stage 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. (*Kullar v.*
29 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) The court must satisfy itself that the

1 settlement is within the “ballpark” of reasonableness. (*Id.*, at p. 133.)

2 Here, the Settlement, which provides for a gross settlement amount of \$1,550,000.00, is fair,
3 adequate, and reasonable to Class Members. The Settlement was calculated using information and data
4 uncovered through extensive case investigation, formal and informal discovery, expert analysis, and
5 the exchange of information in the context of mediation. (Kick Decl., ¶¶ 15-17.) The Settlement takes
6 into account the potential risks and rewards inherent in any case and, in particular, in this matter. (*Id.*,
7 ¶ 35.) Moreover, considering all of the facts in the cases, the Settlement represents a considerable
8 recovery for a Class of 629 individuals. (*Id.*)

9 As discussed above, Defendant has already successfully argued that Plaintiff’s meal and rest
10 break claims are entirely preempted by the FMSCA. Defendant would further argue, *inter alia*, that,
11 Plaintiff’s other claims are entirely preempted and/or derivative of the now-dismissed claims and
12 Plaintiff acknowledges it is very possible that the Court would agree. (*Id.*, ¶ 28.) Defendant would also
13 argue it maintained and implemented a lawful compensation scheme that drivers agreed to and
14 compliant wage and hour policies. (*Id.*) Plaintiff contends otherwise, but faces substantial risk that the
15 Court will disagree. (*Id.*)

16 In addition, with respect to the additional statutory “waiting time penalties” available for unpaid
17 wages pursuant to Labor Code § 203, Defendant denies any willful failure to pay any alleged
18 compensation and could reasonably contend that individual questions of fact predominate as to the
19 predicate “willfulness,” as there are numerous authorities on which Defendant could rely on to
20 demonstrate good faith. This would, if successful, preclude any recovery. *See, e.g., Diaz v. Grill*
21 *Concepts Services, Inc.* (2018) 23 Cal. App. 5th 859, 868. Moreover, Class Counsel believe it would
22 be difficult to show that the defense is “unsupported by any evidence, [is] unreasonable, or [is]
23 presented in bad faith,” as required. (Kick Decl., ¶ 30.)

24 Furthermore, even if non-certification was not a bar to recovery, Defendant could have tried to
25 rely on *Maldonado, et al. v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1334-37, where the Court
26 reversed an award for penalties for inaccurate wage statements because the Court found that inaccurate
27 wage statements alone based on derivative Labor Code violations do not justify penalties, and that the
28 plaintiff must establish injury from the inaccuracy and independent inaccuracies different from
29 underpayments or derivative claims.

1 Throughout negotiations, Class Counsel carefully considered the viability of Plaintiff's claims.
2 (*Id.*, ¶ 15.) The information gathered, including Plaintiff's expert's calculations based on analysis of
3 Defendant's sample of time and pay data, resulted in estimates of Defendant's exposure and the
4 potential recovery for the putative Class, if Plaintiff were to prevail on all theories of liability at trial.
5 (*Id.*) Had this case gone to trial and Plaintiff prevailed on all legal theories, Defendant's maximum
6 exposure for underpayment of wages as calculated by Plaintiff's experts is approximately \$4,307,400,
7 without PAGA penalties. (*Id.*, ¶ 27.) This means that the proposed settlement of \$1,550,000.00 is
8 approximately 35.98% of the total possible recovery for unpaid wages, excluding PAGA.

9 To account for the real litigation risks, strengths, and weaknesses of the case, Plaintiff
10 considered the following discounts: 50% for the risk of Defendant prevailing on its misclassification,
11 joint employer, and *Oman* defenses; 30% discount on penalty claims under *Maldonado*; 40% for the
12 risk of non-certification; and 50% discount on PAGA claims for the Court's discretion on reducing
13 penalties and underlying risks (based on the midpoint of minimum and maximum misclassification
14 penalties). (Kick Decl., ¶ 27.) Defendant's total risk-adjusted realistic exposure was therefore
15 calculated at \$1,709,316 if using the maximum PAGA \$25,000 statutory penalty for misclassification.
16 (*Id.*) The negotiated gross settlement amount of \$1,550,000 thus represents approximately 91% of
17 Plaintiff's realistic valuation of the claims applying the maximum statutory PAGA penalties. (*Id.*)

18 Courts have determined that settlements are, of course, reasonable even where plaintiffs recover
19 only a portion of their actual losses. *See, e.g., Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118
20 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 ("[T]he fact that a proposed settlement amounts
21 to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate.")
22 Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even—a thousandth of a
23 single percent of the potential recovery." (*Id.*; *see also Martel v. Valderamma* (C.D. Cal. 2015) 2015
24 U.S. Dist. LEXIS 49830 * 17 (approving a settlement of \$75,000 when potential damages were \$1.2
25 million, or about 6%); *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 453 (approving
26 settlement with vouchers, not cash, potentially worth a maximum of 3% if all possible claims were
27 actually made, or \$391.5 million aggregate voucher potential where the class could have recovered
28 \$13.05 billion); *City of Detroit v. Grinnell Corp.* (S.D.N.Y. 1972) 356 F. Supp. 1380, 1386, *aff'd in*
29 *part, rev'd on other grounds*, (2d Cir. 1974) 495 F.2d 448 (a recovery of 3.2% to 3.7% of the amount

1 sought is “well within the ball park.”)

2 As this Court knows, the inquiry is not whether the settlement agreement is the best one that
3 class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair,
4 adequate, and reasonable.” (*Chavez*, 162 Cal.App.4th at 55.) The Action involves multiple complex
5 legal issues, including Defendant’s disputed liability for alleged Labor Code violations, federal
6 preemption, and class certification. If the proposed Agreement is not approved, the litigation could go
7 on for several years, which would be extremely expensive and an inefficient use of judicial resources.
8 Continued litigation would also have been expensive, including the expense of expert witnesses and
9 trial consultants, and, potentially hundreds of thousands of additional dollars in attorney fees for both
10 sides. (Kick Decl., ¶¶ 33-34.)

11 Accordingly, Class Counsel believes that \$1,550,000.00 represents a victory on multiple
12 theories and commensurate with any potential recovery at trial, had Plaintiff succeeded in certifying a
13 class and then also prevailed at trial, which outcome is not certain. (*Id.*, ¶¶ 35-36.) Given the risks
14 inherent in continuing to litigate, including: 1) the possibility of an unfavorable, or less favorable,
15 result at trial, 2) the likely possibility that post-trial motions may similarly result in a less favorable
16 result than at trial, and 3) the possibility of a less favorable result on appeal, with the certainty that the
17 appeal process would be lengthy, the Settlement is a fair, adequate, and reasonable resolution for the
18 Class as a whole. (*Id.*)

19 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis
20 [to warrant approval], particularly if recommended by experienced and competent class counsel.” (*In*
21 *re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418,
22 429-30.) The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement
23 Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is
24 fair, reasonable, and adequate, and in the best interest of the Class Members. (Kick Decl., ¶¶ 35-36.)
25 Although the recommendations of Class Counsel are not conclusive, the Court can properly take the
26 recommendations into account, particularly if Class Counsel appears to be competent, has experience
27 with this type of litigation, and significant discovery and investigation have been completed, as is the
28 case here. (4 *Newberg and Rubenstein on Class Actions* (“Newberg”) (6th ed.) § 13.59.) As such, the
29 Court should grant final approval of the Settlement.

1 **VI. PLAINTIFF’S REQUEST FOR ATTORNEYS’ FEES AND COSTS IS REASONABLE**

2 Class Counsel request an award of attorneys’ fees of one-third of the GSA, meaning \$516,667.
3 Although Class Counsel apply pursuant to the percentage-of-the-benefit methodology, the requested
4 fee also is appropriate under a lodestar analysis, or with a lodestar cross-check, and can be alternatively
5 awarded in that manner.

6 **C. Plaintiff Requests a One-Third Percentage-Based Fee Award**

7 California law allows the award of attorneys’ fees in class actions based on the percentage-of-
8 the-fund method. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 486; *Chavez v. Netflix*
9 (2008) 162 Cal.App.4th 43, 63 [“fees based on a percentage of the benefits are in fact appropriate in
10 large class actions when the benefit per class member is relatively low”]; *Wershba v. Apple Computer,*
11 *Inc.* (2001) 91 Cal.App.4th 224, 255; *Consumer Cause v. Mrs. Gooch's Natural Food Markets* (2005)
12 127 Cal.App.4th 387, 397 [the common fund doctrine is “frequently applied in class actions when the
13 efforts of the attorney for the named class representatives produce monetary benefits for the entire
14 class”].) There is substantial authority for determining the fee award based on a percentage of the total
15 value of the recovery. The requested fees fall well within an appropriate range under the common fund
16 approach as it is common to award attorney’s fees to class counsel of one-third (33-1/3%) of the
17 settlement amount or higher. (*Chavez, at 66*: “[e]mpirical studies show that, regardless whether the
18 percentage method or the lodestar method is used, fee awards in class actions average around one-third
19 of the recovery.”)

20 In *Laffitte*, the Supreme Court of California, in a case involving an objection to a one-third
21 percentage based recovery in a \$19 million employment class action lawsuit, stated: “We hold further
22 that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee ... [and] also
23 retain the discretion to forego a lodestar cross-check and use other means to evaluate the reasonableness
24 of a requested percentage fee.” (*Laffitte*, 1 Cal.5th at 506, emphasis added.) Several courts have
25 expressed frustration with the alternative “lodestar” approach, which usually involves wading through
26 voluminous and often indecipherable time records. (See, e.g., *In re Activision Securities Litigation*
27 (N.D. Cal. 1989) 723 F.Supp. 1373, 1375.) The percentage approach is preferable to the lodestar
28 because: (1) it provides predictability to class counsel and class members; (2) encourages efficient
29 resolution by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands

1 on judicial records. (*Id.*, at 1378-79.) In fact, “[a] task force commissioned by the Third Circuit
2 concluded that the lodestar approach... is a cumbersome, enervating, and often surrealistic process of
3 preparing and evaluating fee petitions that now plagues the Bench and Bar and recommended a return
4 to the percentage of the recovery fee formula in cases involving a settlement fund.” (*Lealao v.*
5 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28, citations and quotation marks omitted.) In
6 *Lealao*, the Court of Appeal considered counsel’s efficiency and skill in bringing the case to an early
7 resolution.

8 [T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier
9 to reflect the size of the class recovery without exacerbating the disincentive to settle
10 promptly inherent in the lodestar methodology. Considering that our Supreme Court has
11 placed an extraordinarily high value on settlement . . . it would seem counsel should be
12 ***rewarded, not punished***, for helping to achieve that goal....
13 (*Id.*, at 52, citations omitted, emphasis added.) Newberg notes that the percentage methodology aligns
14 class counsel’s interests with those of the class, rewards efficiency, and thus, decreases the social costs
15 of litigation. (5 Newberg, § 15:65 (6th ed.) Courts should not only consider the size of the class or the
16 amount of the recovery; courts should also examine the size of the individual settlement amount of each
17 class member as an indication of counsel’s contribution to the case. (*Lealao*, 82 Cal.App.4th at 53.)

18 Here, not only have there been no objections to any aspect of this proposed settlement, and no
19 requested opt-outs, but Class Counsel obtained an excellent result for the class members.

18 **D. Analysis Pursuant to the Lodestar Methodology.**

19 Regarding the lodestar methodology, a lodestar figure is calculated by multiplying the
20 reasonable hours expended by a reasonable hourly rate. (*Wershba v. Apple Computer* (2001) 91
21 Cal.App.4th 224, 254.) A lodestar amount may be increased by a multiplier. (*Serrano*, 20 Cal.3d at 49;
22 *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407.) “Multipliers can range from 2 to 4 or even
23 higher.” (*Wershba*, at 255.) Class Counsel’s lodestar totals \$365,330.00 after voluntary deductions
24 based on business judgment. (Kick Decl., ¶¶ 6-8.)³ This means a multiplier of only 1.42x is required to
25 get to the requested fee of \$516,667, well within the range commonly approved.

26
27 ³ Under California law, this Court may award the attorneys’ fees without the attorneys’ timesheets *Concepcion*
28 *v. Amscan Holdings* (2014) 223 Cal.App.4th 1309, 1324; *Raining Data v. Barrenchea* (2009) 175 Cal.App.4th
29 1363, 1375-76 (“[t]he law is clear, however, that an award of attorney fees may be based on counsel’s
declarations, without production of detailed time records”). The concurrently filed declaration by Taras Kick of
The Kick Law Firm, APC summarizes and categorizes the firm’s time records. Class Counsel can also provide
time sheets and make them available for *in camera* review by this Honorable Court if the Court so wishes.

1 The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group,*
2 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). “[I]n assessing a reasonable hourly rate, the trial court
3 is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’
4 reputation and status.” (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The trial
5 court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.”
6 (*Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.) The current
7 prevailing billing or “market” rates in the Los Angeles and the Southern California area range from
8 over \$300.00 to over \$1,000.00 per hour.⁴ As can be seen in the Kick Declaration at Paragraph 5, the
9 rates sought here have been approved by numerous courts across the country, including in this Los
10 Angeles County Complex Court. (Kick Decl., ¶ 5.) Further, the rates are well within the range of rates
11 awarded in class action litigation in California. (*In re Toyota Motor* (C.D. Cal. 2013) 2013 U.S.
12 Dist.Lexis 123298 [approving rate of \$950]; *Banas v. Volcano Corp.* (N.D. Cal. 2014) 47 F.Supp.3d
13 957 [approving 2014 rate of \$1,095; *In re High Tech Emple. Antitrust Litig.*, (N.D. Cal. 2015) 2015
14 U.S. Dist. LEXIS 118052 *33 [approving rates of \$975 an hour].)

15 Trial courts consider the following factors when determining whether to apply a multiplier: “(1)
16 the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the
17 extent to which the nature of the litigation precluded other employment by the attorneys, (4) the
18 contingent nature of the fee award.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, citations
19 omitted.) In California, “[m]ultipliers can range from two to four or even higher” and are routinely
20 applied. (*Wershba*, 91 Cal.App.4th at 254.)⁵ The goal is “to entice competent counsel to undertake
21

22 ⁴ See, e.g., *McKnight, et al., v. Uber Technologies, Inc., et al.* 3:14-CV-05615-JST, Docket No. 148, [December
23 8, 2017 attorney fee declaration citing *In re High-Tech Employee Antitrust Litig.* (N.D. Cal. Sept. 2, 2015) 2015
24 WL 5158730, at *9 (finding reasonable “billing rates for partners [that] range from about \$490 to \$975 ... billing
25 rates for non-partner attorneys, including senior counsel, counsel, senior associates, associates, and staff
26 attorneys, [that] range from about \$310 to \$800...”]; *Bickley v. CenturyLink, Inc.* (C.D. Cal. Nov. 29, 2016) No.
27 CV 15-1014-JGB (ASX), 2016 WL 9046911, at *3-4 [finding attorneys’ fee requests of up to \$750 per hour
28 reasonable and in line with the prevailing rate in the District].). In *Bickley*, a billing survey was submitted from
29 2013 listing the rates for partners and associates from large law firms, noting that those rates ranged from a low
of \$515/per hour for associates to \$1,220/per hour for partners. (*Id.*, at ¶ 4.) The majority of the rates for partners
were between \$700 and \$1000 per hour. (*Ibid.*)

⁵ See also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora Community
Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that included a 12.0
multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 (awarding a common
fund fee award that amounted to a 5.2 multiplier); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
1051 (approving a 3.65 multiplier); *Van Vranken*, 901 F.Supp. at 298-299 (approving multiplier of 3.6).

difficult public interest cases.” (*San Bernardino Valley Audubon Soc. v. County of San Bernardino* (1985) 155 Cal.App.3d 738, 755.) Fee awards that are too small “chill the private enforcement essential to the vindication of many rights[.]” (*Lealao*, 82 Cal.App.4th at 53.)

If for whatever reason the Court were inclined to use a percentage lower than one-third, Class Counsel respectfully request a multiplier on the lodestar to allow the awarded attorneys’ fees to arrive at \$516,667. Although there are a number of valid reasons for a multiplier in this case, one is the contingent risk as explained by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133: “A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions.” Further, Class Counsel have devoted significant time and resources on this case, which could have been directed towards other cases. (Kick Decl., ¶ 21.)

Class Counsel seek reimbursement of necessary litigation costs in the amount of \$9,324.64, which is the amount that has been advanced on behalf of the class members to date and is less than the amount represented in the notice to Class Members as “up to \$25,000.” (*Id.*, ¶ 23, Ex. 1, SA.) These costs include already incurred costs of filing fees, the fees for expert consultants who analyzed the data produced by Defendant, legal research, mediation fees, and others. (*Id.*)

VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE

Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) It is within a court’s discretion to award payment to a class representative for their efforts and work. (*Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299 [approving \$50,000 participation award to a single class representative].)

The criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.] (*Ibid.*)

Here, Plaintiff Dmytro Martyniuk agreed to step forward as a “replacement” Class

1 Representative after the former plaintiff became no longer eligible to be a class representative.
2 (Martyniuk MPA Decl., ¶ 6.) After preliminary approval, the Class was notified of Plaintiff's request
3 for a Class Representative Service Award of \$10,000.00. (Kline Decl., Ex. A.) No objections were
4 received. (*Id.*, ¶ 12.) Plaintiff believes the requested Service Award is fair and appropriate given: (1)
5 the time and effort he expended, (2) the risks he faced and continues to face as a result of bringing the
6 Action; (3) the fact he stepped up as a replacement Class Representative and thereby put Class
7 Members' interests ahead of his own; and (4) the substantial benefit conferred upon the Class by way
8 of this Settlement. (Kick Decl., ¶ 24.) Accordingly, it is appropriate and just for Plaintiff to receive a
9 Service Award for his services on behalf of the Class, in addition to his individual payment as a Class
10 Member.

11 **VIII. REASONABLE SETTLEMENT ADMINISTRATION COSTS TO BE APPROVED**

12 As set forth in the accompanying Declaration of Lindsay Kline from Simpluris, Inc., the total
13 costs incurred and to be incurred by Simpluris for the notice and settlement administration process is
14 \$10,900.00. (Kline Decl., ¶ 18, Ex. B.) The costs incurred and to be incurred include, but are not
15 limited to, expenses for printing and mailing the Notice of Class Action Settlement to Class Members;
16 establishing and maintaining a means to receive and validate opt out requests, objections, or disputes
17 of mileage submitted by Class Members, including a toll-free telephone number; establishing and
18 maintaining a settlement fund account; processing and mailing payments to the Plaintiff, Class Counsel
19 and Class Members; calculating employer-side taxes; providing appropriate forms and calculations
20 to Defendant; providing counsel with weekly reports; and mailing settlement checks. (*Id.*, ¶¶ 3-4.) As
21 such, the Court should grant final approval of payment to Simpluris in the amount of \$10,900.00.

22 **IX. THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED**

23 In granting preliminary approval, this Court already determined that the proposed settlement
24 class fulfills all the criteria of California Code of Civil Procedure section 382, and applicable case law,
25 and is appropriate for certification. None of these factors have changed.

26 Numerosity is readily satisfied because there are 629 members in the settlement Class. *See*,
27 *Vasquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971). (Kline Decl., ¶ 8.) Common questions of
28 law and fact predominate because all Class Members were subject to a common policies and practices
29 and paid according to uniform formulae. *See Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723,

1 732 (2010) (citing *Wash. Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001)). Typicality and
2 adequacy of representation are also satisfied as Plaintiff was also subject to the same compensation and
3 employment policies and practices. Plaintiff's experience was typical of Defendant's employees in
4 California. *See* 7 Newberg § 23:23 (6th ed.). (Martyniuk MPA Decl., ¶ 5.)

5 Further, ascertainability also is met as Class members, who all worked for Defendant during the
6 Class Period, share "a set of common characteristics sufficient to allow a member of that group to
7 identify himself or herself as having a right to recover based on the description," (*See Bartold v.*
8 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828), and in addition, Defendant's records readily
9 identified the Class Members based on their dates of employment. (Kline Decl., ¶ 6.) Indeed, notice
10 was successfully accomplished to the Class Members as ordered by the Court. (*Id.*, ¶ 9.) Lastly, in this
11 matter, where global resolution is achieved for 629 Class Members whose claims which would
12 otherwise be too small to warrant individual litigation, a class action is demonstrably superior to other
13 methods of adjudication. *Richmond, supra*, 29 Cal.3d 462, 469. (Kline Decl., ¶ 8.)

14 With each of these factors satisfied, it is appropriate now to grant final certification.

15 **X. CONCLUSION**

16 Plaintiff, hence, respectfully requests that this Court enter a Final Approval Order and an
17 accompanying Judgment as set forth above.

18 DATED: June 6, 2023

Respectfully submitted,
THE KICK LAW FIRM, APC

20 By: /s/ Taras Kick
21 Taras Kick
22 Greg Taylor
23 Attorneys for Plaintiff Dmytro Martyniuk
and the Class

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I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049.

- **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;**
- **DECLARATION OF TARAS KICK IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; and**
- **DECLARATION OF LINDSAY KLINE REGARDING NOTICE AND SETTLEMENT ADMINISTRATION.**

Alexander M. Medina
 Kyle Owen
MEDINA McKELVEY LLP.
 925 Highland Pointe Dr. Suite 300
 Roseville, CA 95678
 Telephone: (916) 960-2211
alex@medinamckelvey.com
kyle@medinamckelvey.com

[X] **BY E-SERVICE:** I caused the documents to be electronically transmitted to Case Anywhere, an electronic filing service provider, at www.caseanywhere.com, pursuant to the Court's Electronic Case Management Order governing the matter and mandating electronic service to person(s) at the address(es) listed above.

Executed on June 6, 2023, in Los Angeles, California.

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