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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JAMES GOODINE, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TEAM ONE LOGISTICS, LLC, a Georgia
limited liability company; TEAM ONE
CONTRACT SERVICES, LLC, a California
limited liability company; and DOES 1
through 100,

Defendants.

CASE NO. 19STCV28521

*[Case assigned for all purposes to the Hon.
William F. Highberger, Dept. SSC10]*

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 22, 2020
Time: 10:30 a.m.
Dept.: SSC-10

Action Filed: August 15, 2019
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 22, 2020, at 10:00 a.m. in Department SSC10 of the above-entitled Court, located at 312 N Spring St, Los Angeles, California 90012, Plaintiffs James Goodine and Greg Crawford (collectively "Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed Settlement of this lawsuit;
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class:

All non-exempt drivers employed by Defendants Team One Logistics, LLC and Team One Contract Services, LLC in California from August 15, 2015, to May 8, 2020.

3. Preliminary appointment of Plaintiffs James Goodine and Greg Crawford as Class Representatives;
4. Preliminary appointment of Fletcher W. Schmidt, Paul K. Haines, and Andrew J. Rowbotham, of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award amounts for the class representative enhancement awards, Settlement Administrator costs, the Private Attorneys General Act payment to the California Labor and Workforce Development Agency, as well as attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and entry of the proposed Order instructing the Class Notice to be disseminated to the proposed Settlement Class as provided in the Settlement.

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1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the declarations of Fletcher W. Schmidt, Paul K. Haines, Andrew J. Rowbotham,
3 James Goodine, Greg Crawford, Jodey Lawrence of Phoenix Settlement Administrators, and the
4 exhibits attached thereto, the pleadings and other papers filed in this action, and on any further
5 oral or documentary evidence or argument presented at the time of hearing.

6
7 Dated: May 27, 2020

Respectfully Submitted,
HAINES LAW GROUP, APC

8
9 By:



Fletcher W. Schmidt
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs James Goodine and Greg Crawford (collectively “Plaintiffs”) maintain this
4 putative class action (the “Lawsuit”) on behalf of all non-exempt drivers employed by Defendants
5 Team One Logistics, LLC and Team One Contract Services, LLC (collectively “Team One”) in
6 California at any time from August 15, 2015, to May 8, 2020 (the “Class Period”) (Plaintiffs and
7 Team One are referred to collectively as the “Parties”). Plaintiffs allege that Team One: (1) failed
8 to pay all overtime wages; (2) failed to pay all minimum wages; (3) failed to provide all required
9 meal periods; (4) failed to authorize and permit all rest periods; (5) failed to reimburse necessary
10 business expenditures; (6) failed to issue accurate and itemized wage statements; (7) failed to pay
11 all final wages upon separation of employment; (8) engaged in unfair, unlawful business
12 practices; and (9) are liable for civil penalties under the Private Attorneys General Act, Labor
13 Code section 2698 *et seq.* (“PAGA”).¹

14 Through this Motion, Plaintiffs respectfully request that this Court preliminarily approve
15 this non-reversionary class action settlement (“Settlement”), on behalf of the following
16 Settlement Class:

17 All non-exempt drivers employed by Team One in California from August 15,
18 2015, to May 8, 2020.

19 Based upon the data received from Team One, there are approximately 194 potential
20 Settlement Class Members who worked during the Class Period. The Settlement calls for Team
21 One to pay a Gross Settlement Amount (“GSA”) of \$175,000.00. This represents a significant
22

23
24 ¹ Due to a medical leave of absence, Plaintiff James Goodine had not physically worked for Team One for
25 over one year prior to this action being filed. Schmidt Decl., ¶ 9. Prior to mediation, Plaintiff’s counsel
26 was retained by a second putative class member, Gregory Crawford, who had standing to bring claims for
27 waiting time penalties (Labor Code §§ 201-203), wage statement penalties (Labor Code § 226 *et seq.*) and
28 civil penalties under PAGA (Labor Code § 2698 *et seq.*). *Id.* The Parties therefore evaluated these
additional claims for mediation purposes. *Id.* In connection with the classwide resolution at mediation, the
Parties further agreed to amend the complaint to add Mr. Crawford as a named plaintiff along with the
previously unpled causes of action for waiting time penalties, wage statement penalties, and civil penalties
under PAGA. *Id.* The Parties will therefore file a stipulation to amend the complaint as set forth above
prior to the hearing on this Motion. *Id.*

1 result for Settlement Class Members who will be agreeing to a release of only those claims that
2 were actually asserted, or which could have been asserted based on the same set of operative facts
3 alleged in the Lawsuit. After deductions for Plaintiffs’ enhancement awards, settlement
4 administrator costs, the PAGA payment to the California Labor and Workforce Development
5 Agency (“LWDA”), and attorneys’ fees and costs to Class Counsel, the remaining amount (the
6 “Net Settlement Amount”) of approximately \$80,416.67 will be distributed to the Settlement
7 Class. Significantly, Settlement Class Members do not need to file a claim form in order to receive
8 a Settlement Award, and all Settlement Class Members who do not opt-out will automatically
9 receive average payments of approximately \$414.52.

10 Prior to reaching this proposed Settlement, Team One provided Plaintiffs with
11 timekeeping and payroll records for a representative sample of putative class members, in addition
12 to other relevant data points needed to extrapolate the data to cover the entire putative class, which
13 Plaintiffs’ counsel then used to construct a comprehensive damages model. After extensive legal
14 research and analysis along with a comprehensive review of the data performed by Plaintiffs, the
15 Parties participated in a mediation session with Jeffrey Krivis, Esq., a respected wage and hour
16 class action mediator, which resulted in a settlement by way of a mediator’s proposal. The long-
17 form settlement agreement was drafted and executed over the following months.²

18 This proposed Settlement is well within the range of possible approval in light of the
19 significant legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation,
20 and the monetary benefits to the Settlement Class. For the reasons discussed herein, Plaintiffs
21 respectfully request that the Court grant preliminary approval of the Settlement.

22 **II. SUMMARY OF THE LITIGATION**

23 Team One runs a national asset-based transportation and logistics company. Declaration
24 of Fletcher W. Schmidt (“Schmidt Decl.”), ¶ 8. Team One employs individuals who operate short-
25 haul vans and long-haul tractor-trailers to deliver goods for various carriers via contract. *Id.*

26
27 ² The Stipulation of Settlement (“Settlement Agreement”) and the proposed Notice Packet (which is
28 comprised of the Notice of Class Action Settlement (“Class Notice”) and Notice of Settlement Award
 (“Dispute Form”)) are attached as Exhibits 1 and 2, respectively, to the Declaration of Fletcher W. Schmidt
 filed concurrently herewith.

1 Plaintiffs, like all other Settlement Class Members, were employed by Team One as non-exempt
2 drivers. *Id.* Plaintiffs’ primary job duties consisted of driving a tractor-trailer, dropping off
3 containers, and picking up loads throughout the ports of Long Beach and Los Angeles and
4 transporting them back to Team One’s shipyard in Moreno Valley. *Id.*

5 **A. FMCSA PREEMPTION OF MEAL AND REST PERIOD CLAIMS**

6 On December 21, 2018, the Federal Motor Carrier Safety Administration (“FMCSA”)
7 issued an Order and Determination of Preemption which concluded that California’s meal and
8 rest period laws, as applied to “property-carrying commercial motor vehicle drivers,” are
9 preempted by the FMCSA’s Hours of Service rules. Schmidt Decl., ¶ 10. This decision marked a
10 complete reversal from the FMCSA’s prior determinations upholding California’s meal and rest
11 period requirements for drivers, which date back to 2008. *Id.*

12 On February 6, 2019, California Attorney General Xavier Becerra and the California
13 Labor Commissioner’s Office petitioned the Ninth Circuit to invalidate the FMCSA’s preemption
14 determination. Schmidt Decl., ¶ 11. The International Brotherhood of Teamsters and several other
15 commercial truck drivers also filed separate petitions requesting that the Ninth Circuit review and
16 reverse the FMCSA’s determination. *Id.* The Ninth Circuit granted review on December 28, 2018.
17 *See Intl Brotherhood of Teamsters, et al v. FMCSA*, No. 18-73488 (9th Cir.). The Ninth Circuit
18 is considering dates for oral argument on this issue to be held as early as June 2020. Schmidt
19 Decl., ¶ 11; Exhibit 3 (*Intl Brotherhood of Teamsters v. FMCSA* - Docket Entry Entered on
20 02/07/2020).

21 **B. PLAINTIFFS’ CLAIMS AND TEAM ONE’S DEFENSES**

22 Plaintiffs allege that Team One failed to provide drivers with all required meal periods as
23 well as duty-free rest periods for every four hours worked, or major fraction thereof. *See Brinker*
24 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1028, 1049 (holding that the
25 applicable wage orders and the California Labor Code require employers to provide a first meal
26 period before the end of the fifth hour of work, a second meal period “after no more than 10 hours
27 of work,” and rest periods for every four hours worked, or major fraction thereof). Plaintiffs
28 contend that Team One never provided meal or rest periods to its drivers on long-haul shifts

1 throughout the Class Period. Schmidt Decl., ¶ 13. Plaintiffs further allege that drivers working
2 long-haul shifts are often unable to take legally compliant meal and rest periods throughout the
3 workday as their schedules are set in advance and do not include time set aside for such breaks.³
4 *Id.*

5 Team One maintains that drivers on long-haul shifts are exempt from California's meal
6 and rest period requirements based on the FMCSA's 2018 determination and therefore they
7 cannot maintain claims for the failure to provide meal and rest periods under California law, a
8 position consistent with this Court's own rulings. *See In re Garda Wage and Hour Cases*, No.
9 JCCP 4828 (Cal. Sup. Ct. 2019) (granting summary judgment as to two named plaintiffs and
10 enforcing the FMCSA's meal and rest period preemption determination as applied to commercial
11 drivers). Team One contends that it has always provided legally required meal and rest periods
12 for drivers working short-haul shifts. Schmidt Decl. ¶ 14. Further, on occasions when a driver on
13 a short-haul shift is unable to take a legally compliant meal period, Team One pays a meal period
14 premium. *Id.* Team One contends that short-haul shift timesheets are regularly reviewed to ensure
15 compliance with California's meal period requirements, and Team One disciplines drivers who
16 do not take the breaks they are entitled to. *Id.*

17 As a result of these alleged meal and rest period violations, Plaintiffs contend that Team
18 One faces derivative wage statement liability for its failure to issue accurate and compliant wage
19 statements along with waiting time liability for its failure to pay drivers all final wages upon their
20 separation of employment. Schmidt Decl., ¶ 15. Plaintiffs also seek civil penalties under PAGA
21 based on the Labor Code violations alleged herein. *Id.*

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23
24 ³ Plaintiffs' operative complaint also contains claims for a failure to pay all overtime and minimum wages
25 as a result of clocking out for purported meal periods and working off-the-clock when meal periods were
26 not provided, as well as a failure to reimburse drivers for the use of their personal cell phones for business
27 purposes. Schmidt Decl., ¶ 12. However, after reviewing the timekeeping and payroll records produced
28 by Team One, Plaintiffs determined that these claims were not corroborated by the data and therefore did
not meaningfully add to Team One's overall exposure at mediation. *Id.* Specifically, almost all drivers
working long-haul shifts did not clock out for meal periods during the Class Period and many wage
statements reflected cell phone reimbursements. *Id.* Plaintiffs' off-the-clock claims were equally unviable
for van drivers as they were paid for all overtime hours at the overtime rate of pay throughout the Class
Period. *Id.*

1 Team One contends that because Plaintiffs’ underlying meal and rest period claims will
2 fail, the derivative claims will also fail. Schmidt Decl., ¶ 19. Specifically, Team One argues that
3 Plaintiffs’ cannot show that Team One “willfully” failed to pay any former employee wages owed
4 at the time of their termination because Team One had a policy of paying premiums for missed
5 meal periods and had every reason to believe that it provided meal and rest periods to drivers who
6 were entitled to them under California law. *See* 8 Cal. Code Regs. § 13520 (“[A] good faith
7 dispute that any wages are due will preclude imposition of waiting time penalties under Section
8 203...A good-faith dispute that any wages are due occurs when an employer presents a defense,
9 based in law or fact which, if successful, would preclude any recovery on the part of the
10 employee.”). Team One also contends that Plaintiffs’ meal and rest period claims cannot support
11 claims for waiting time penalties or wage statement penalties. *See Ling v. P.F. Chang’s China*
12 *Bistro, Inc.* (2016) 245 Cal.App.4th 1242, 1261 (meal and rest period premium pay compensates
13 for the non-provision of meal and rest periods, not for the ‘nonpayment of wages’ as required by
14 Labor Code section 203); *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444,
15 474–475, review granted Jan. 2, 2020 (S258966). Team One also maintains that Plaintiffs’
16 waiting time exposure analysis is overstated in that it assumes all former employees experienced
17 an underpayment of wages. Schmidt Decl., ¶ 19. Likewise, because Team One believed it owed
18 no additional wages to its employees in light of its regular review of drivers’ timesheets, it
19 believes that it issued wage statements that complied with Labor Code section 226(a) because
20 they reflected the actual wages paid to employees, and as a result, neither Plaintiffs nor any
21 putative class member can show that they suffered an injury as a result of these wage statements.
22 *See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1201 (2008); *Maldonado v. Epsilon Plastics,*
23 *Inc.*, 22 Cal. App. 5th 1308 (2018).

24 Since Plaintiffs’ PAGA claim is derivative of the underlying meal and rest period claims,
25 Team One asserts that the PAGA claim will fail with those claims. *See Price v. Starbucks Corp.*
26 (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative
27 UCL and PAGA claims also fail.”). Team One also maintains that given its good-faith defenses,
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1 this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to
2 find Team One liable for any of Plaintiffs' underlying claims. Schmidt Decl., ¶ 20.

3 **C. DISCOVERY AND MEDIATION**

4 In connection with mediation, Team One provided Plaintiffs with timekeeping and payroll
5 records for a 10% sampling of putative class members who worked during the putative class
6 period. Schmidt Decl., ¶ 22. Team One also provided Plaintiffs with relevant policies and
7 additional data points for each putative class member, such as their dates of employment and
8 respective rates of pay during the putative class period. *Id.* Plaintiffs' counsel used this
9 information to extrapolate the records for the entire putative class. *Id.* Plaintiffs' counsel then
10 analyzed the data and created a comprehensive damages model containing the likely exposure
11 that Team One faced on each claim. *Id.*

12 On March 2, 2020, the Parties participated in a mediation with Jeffrey Krivis, Esq., a
13 highly respected wage and hour class action mediator. Schmidt Decl., ¶ 23. During mediation, the
14 Parties exchanged divergent views on Team One's liability and exposure valuations, their legal
15 positions, and the likelihood of certification of Plaintiffs' claims. *Id.* With the help of Mr. Krivis'
16 mediator's proposal, the Parties reached a classwide resolution at the conclusion of the mediation.
17 *Id.*

18 **III. THE PROPOSED SETTLEMENT**

19 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

20 Should the Court preliminarily approve this Settlement, Team One will pay a Gross
21 Settlement Amount of \$175,000.00. Settlement, ¶ 3. This Settlement is non-reversionary;
22 Settlement Class Members will automatically receive their Settlement Award unless they
23 affirmatively opt-out of the Settlement. *Id.*, ¶ 3.C. Team One will fund the Gross Settlement
24 Amount within 15 days of the Effective Date – which is the date on which the Court enters its
25 order and judgment granting final approval of the Settlement, or if there are objectors to the
26 Settlement, the date upon which all time limitations for filing an appeal have expired. *Id.*, ¶ 3.B.

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The monetary terms of the Settlement are as follows:

Gross Settlement Amount:	\$175,000.00
Minus Court-approved attorneys' fees (1/3):	\$58,333.33
Minus Court-approved attorneys' costs (up to):	\$15,000.00
Minus Court-approved enhancement awards (up to):	\$10,000.00
Minus Settlement Administrator costs (up to):	\$7,500.00
Minus PAGA payment to the LWDA:	\$3,750.00
Net Settlement Amount:	\$80,416.67

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved attorneys' fees and costs, enhancement awards, costs of settlement administration, and the PAGA payment to the LWDA, the remainder amount of approximately \$80,416.67 ("Net Settlement Amount") will be paid to the Settlement Class. Settlement, ¶ 4.A; Schmidt Decl., ¶ 24.

Team One's records indicate that there are approximately 194 total Settlement Class Members who worked during the Class Period. Schmidt Decl., ¶ 24. Based on the allocations of the Net Settlement Amount, Settlement Class Members will receive, on average, a payment of approximately \$414.52. *Id.* Settlement Class Members will have 60 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. Settlement, ¶ 9.D. Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Team One that were asserted or could have been asserted based on the operative facts alleged in the Lawsuit during Class Period. *Id.*, ¶ 2.A.

2. Attorneys' Fees, Costs, and Representative Enhancement Payments

As part of the Settlement, Plaintiffs will apply for enhancement awards at the time of seeking final approval of the Settlement in the total amount of \$10,000.00 (\$5,000.00 for each named Plaintiff) for their service to the Settlement Class and their general release of all claims (known or unknown) against Team One. Settlement, ¶ 3.C.(3); Schmidt Decl., ¶ 25. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186

1 Cal.App.4th 1380, 1393-94. Plaintiffs’ requested enhancement awards are intended to recognize
2 the significant benefits conferred upon the Settlement Class due to the time and effort that
3 Plaintiffs expended on their behalf, including providing factual information and documents to
4 their attorneys, identifying potential witnesses, and participating in in-person and telephonic
5 meetings with their attorneys to discuss the claims and theories at issue in the litigation, as well
6 as the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this
7 case, as well as the fact that Plaintiffs agreed to a general release of all claims subject to a waiver
8 of California Civil Code section 1542. Settlement, ¶ 2.B; Schmidt Decl., ¶ 25.

9 Class Counsel will also apply for an attorneys’ fee award of \$58,333.33 (one-third of the
10 GSA), and up to \$15,000.00 in verified costs. Settlement, ¶ 5; Schmidt Decl., ¶ 26. Plaintiffs
11 submit that the requested fee is fair compensation for undertaking complex, risky, expensive, and
12 time-consuming litigation on a purely contingent fee basis. Class Counsel incurred substantial
13 attorneys’ fees conducting pre-filing investigation, analyzing Plaintiffs’ claims, conducting legal
14 research and analysis, reviewing documents and data produced by Team One, building a
15 comprehensive damages model, preparing for and attending mediation, negotiating and preparing
16 the long-form Settlement Agreement, preparing this motion for preliminary approval, and
17 otherwise litigating the case. Schmidt Decl., ¶ 26. Class Counsel will also expend future attorney
18 time in attending the hearing on this Motion, overseeing the Notice process and fielding questions
19 from Settlement Class Members, drafting the Final Approval Motion and supporting documents,
20 and attending the Final Approval hearing, among other tasks. *Id.*

21 Both California and federal courts have recognized that an appropriate method for
22 awarding attorneys’ fees in class actions is to award a percentage of the “common fund” created
23 as a result of the settlement. *See Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 506 (“the
24 percentage of fund method survives in California class action cases...”); *Wershba v. Apple*
25 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the “percentage of recovery”
26 and “lodestar/multiplier” methods). Historically, courts have awarded percentage fees in the range
27 of 20% to 50%, depending on the circumstances of the case. *See 4 Newberg on Class Actions* §
28 14.6 (4th Ed. 2013) (“No general rule can be articulated on what is a reasonable percentage of a

1 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
2 common fund in order to assure that the fees do not consume a disproportionate part of the
3 recovery obtained for the class, although somewhat larger percentages are not unprecedented.”).

4 Class Counsel submits that the request for attorneys’ fees is reasonable when viewed as
5 an overall percentage of the settlement (one-third) in light of the substantial risks, including the
6 possibility that the Lawsuit could not move forward as a class action, as well as the significant
7 work undertaken, the extremely positive results obtained for the Settlement Class, and the
8 efficiency with which the Parties conducted the litigation. Should the Court grant preliminary
9 approval, Class Counsel will seek an award of attorneys’ fees and verified litigation costs at the
10 time of seeking final approval of the Settlement.

11 **IV. ARGUMENT**

12 **A. PRELIMINARY APPROVAL IS WARRANTED**

13 California Rule of Court 3.769 conditions the settlement of a class action on court
14 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
15 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
16 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine “that the
17 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir.
18 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine “whether
19 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
20 preferred means of dispute resolution, particularly in complex class action litigation. *See In re*
21 *Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a
22 proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not
23 the product of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150
24 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was
25 negotiated at arm’s length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168
26 Cal.App.4th 116, 130.

27 **1. Standard for Preliminary Approval**

28 To make a fairness determination, the Court should consider several factors, including

1 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
2 litigation, the risk of maintaining class action status through trial, the amount offered in
3 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
4 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
5 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of
6 factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245.
7 As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the
8 overall balance of factors in this case.

9 **a. The Strength of Plaintiffs’ Case**

10 Class Counsel carefully vetted the claims at issue, reviewed timekeeping and payroll
11 records as well as relevant policy documents, and conducted a detailed analysis of that data to
12 create a comprehensive damages model for Team One’s liability. *See* Schmidt Decl., ¶¶ 22-23.
13 Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge
14 that there were substantial risks and uncertainty in proceeding with class certification and trial.
15 As explained in detail in section II.B., *supra*, Team One presented numerous defenses to
16 Plaintiffs’ claims, both on the merits and with respect to class certification. Although Plaintiffs
17 were prepared to litigate these claims through class certification and, ultimately, through trial,
18 given the amount offered in settlement, Plaintiffs predicted that it was unlikely that further
19 litigation would result in a substantially more beneficial result for the Settlement Class. Thus, this
20 factor supports preliminary approval of the Settlement.

21 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

22 The Parties had not yet begun formal discovery prior to attending mediation and instead
23 agreed to informally stay formal discovery pending the robust informal exchange of documents
24 and information for mediation purposes. *See* Schmidt Decl., ¶ 22. Absent the Settlement, the
25 Parties would need to expend substantial time and resources to complete formal written and
26 deposition discovery and prepare the case for class certification and trial. The Settlement avoids
27 the considerable attorneys’ fees and costs associated with conducting formal discovery, moving
28 for class certification and potentially summary judgment or adjudication, and ultimately, trial, as

1 well as the risks and the accompanying burden of continued litigation on the Court.

2 **c. Risk of Maintaining Class Action Status**

3 At the time of the Parties' proposed Settlement, Plaintiffs had not yet filed their motion
4 for class certification. Given Team One's arguments in opposition of class certification, there was
5 a risk that there would not be a certified class at the time of trial. Thus, this factor supports
6 preliminary approval of the Settlement.

7 **d. Amount Offered in Settlement Given Realistic Value of Claims**

8 This proposed Settlement provides a fair and reasonable monetary recovery for the
9 Settlement Class in the face of disputed claims. After analyzing the data provided by Team One
10 prior to mediation, Plaintiffs prepared a classwide exposure analysis and forecasted the expected
11 recovery for each claim as follows:

12 **Meal and Rest Period Violations: \$151,407**

13 Plaintiffs allege that Team One failed to provide full, 30-minute first meal periods
14 commencing before the end of the fifth hour of work and second meal periods for shifts in excess
15 of 10.0 hours. *See* Schmidt Decl., ¶ 13. Plaintiffs also allege that Team One failed to provide duty-
16 free uninterrupted 10-minute rest periods for every four hours worked, or major fraction thereof.
17 *Id.* Assuming that Plaintiffs are correct and the Ninth Circuit overrules the FMCSA's meal and
18 rest period preemption determination, Plaintiffs calculated Team One's maximum exposure for
19 meal and rest period violations as follows: \$903,920 (5,200 workweeks x 4.29 shifts per week x
20 2 violations per day (1 meal period penalty and 1 rest period penalty) x \$20.26 average hourly
21 rate). *Id.*

22 Team One argues that there are significant issues with Plaintiffs' meal and rest period
23 claims, both as to the merits and as to certification. First, the FMCSA's meal and rest period
24 preemption determination, as upheld by this Court, is the current state of the law for drivers
25 completing long-haul shifts, which comprised approximately 27% of all shifts worked during the
26 relevant time period. *See* Schmidt Decl., ¶ 14. Because the preemption determination, assuming
27 it was not overturned, would provide a complete defense to Plaintiff's claims as to long-haul
28 shifts, Defendants argued that this alone warranted a 27% reduction of the total exposure in

1 Plaintiffs' model. *Id.* Team One further contends that drivers completing short-haul shifts were
2 provided with all required meal and rest periods and Team One monitored drivers' daily
3 timesheets to ensure breaks were actually being taken (which it is not required to do). *Id.* Team
4 One maintains that it compensates drivers working shift-haul shifts with meal period premiums
5 for non-compliant meal periods and that it does not owe premiums in instances where the driver
6 voluntarily chose to forego a compliant meal period or waive a meal period when legally able. *Id.*
7 This defense was corroborated by Plaintiffs' review of the timekeeping and payroll data, which
8 showed a very high compliance rate for short-haul shifts, no discernible pattern of non-compliant
9 meal periods, and payment of meal period premiums in instances where compliant meal periods
10 were not recorded. *Id.* Furthermore, Team One contends that even if there were some evidence of
11 missed or non-compliant meal periods, Plaintiffs' meal period claims are not suited for class
12 certification, because individual inquiries would be required to assess whether meal periods were
13 validly waived, and the reasons why a particular employee recorded a non-compliant meal period
14 or missed a meal period on a particular shift. *Id.* As to Plaintiffs' rest period claim, Team One
15 argues that any violations drivers working short-haul shifts may have purportedly experienced
16 were not the result of a companywide policy or practice since drivers on short-hauls were
17 authorized and permitted to take duty-free rest periods. *Id.* Team One further argues that
18 Plaintiffs' rest period claim is inherently unsuited for class treatment as it would require
19 individualized inquiries to determine whether a certain rest period was denied on a given shift,
20 and whether a missed or non-compliant rest period was the result of individual employee choice,
21 which would devolve into an unmanageable series of mini-trials, particularly since rest periods
22 were not recorded and there was no other common evidence of when rest periods were taken. *Id.*
23 Given these potential defenses, Plaintiffs discounted Team One's maximum exposure by 33% for
24 the risk of non-certification and 75% for the risk of being unsuccessful on the merits, to arrive at
25 an estimated exposure of \$151,407. *Id.*, ¶ 13.

26 **Waiting Time Penalties: \$39,745**

27 According to the data produced by Team One, approximately 122 drivers separated their
28 employment with Team One during the 3-year statute of limitations period. Schmidt Decl., ¶ 16.

1 Plaintiffs therefore calculated Team One’s maximum waiting time penalty exposure at \$593,213
2 (122 former drivers x \$20.26 average hourly rate x 8 hours per day x 30 days). *Id.* Team One
3 maintains that waiting time penalties are not appropriate here, as they are derivative of meal and
4 rest period claims, which cannot support such penalties. *See Ling, supra* 245 Cal.App.4th at 1261
5 (holding that meal and rest period premium pay compensates for the non-provision of meal and
6 rest periods, not for the ‘nonpayment of wages’ as required by Labor Code section 203). Team
7 One further contends that, even if meal and rest period premium wages are “wages” for purposes
8 of Labor Code section 203, Plaintiffs cannot show that Team One willfully failed to pay any
9 former employee wages owed at the time of their termination because it was relying on the
10 FMCSA preemption decision as to long-hauls, and as to short-hauls, it provided meal and rest
11 periods in accordance with the law and paid meal period premiums for missed or non-complaint
12 meal periods. Team One therefore had every reason to believe that it had paid employees all the
13 wages they were owed. Schmidt Decl., ¶ 19. Plaintiffs therefore discounted the value of this claim
14 by 33% for the risk of non-certification of the underlying claims, and 90% for a risk of being
15 unsuccessful on the merits (including a failure to establish willfulness), for an estimated recovery
16 on this claim of \$39,745. *Id.*, ¶ 16.

17 Wage Statement Violations: \$44,823

18 According to the data produced by Team One, there were 2,715 wage statements issued
19 to 78 eligible drivers during the 1-year statute of limitations period. Schmidt Decl., ¶ 17.
20 Assuming Plaintiffs could prove at least one meal or rest period violation for each pay period,
21 Plaintiffs calculated Team One’s wage statement exposure at \$267,600 (78 wage statements x
22 \$50 “initial” violation rate + 2,637 wage statements x \$100 “subsequent” violation rate). *Id.* Team
23 One maintains that Plaintiffs’ meal and rest period claims cannot support derivative wage
24 statement penalties. *See Naranjo, supra*, 40 Cal.App.5th at 474–475. Further, Team One argues
25 that Plaintiffs cannot establish that they or any putative class member have suffered an injury as
26 a result of a knowing and intentional violation of Labor Code section 226 because, even assuming
27 Team One failed to pay meal and rest period premium wages, Team One’s wage statements
28 accurately reflected the wages actually paid to the drivers in the relevant pay periods. *Id.*, ¶ 19. In

light of this, as well as the potential failure to prove that the violations were “knowing and intentional” as required by Labor Code section 226(e), Plaintiffs discounted the value of this claim by 33% for the risk of non-certification of the underlying claims and discounted 75% for a risk of being unsuccessful on the merits, for an estimated exposure of \$44,823. *Id.*, ¶ 17.

PAGA Penalties: \$16,969

The success of Plaintiffs’ PAGA claim is wholly dependent upon the success of the underlying meal and rest period claims occurring within the one-year statute of limitations applicable to PAGA. Assuming that Plaintiffs could prove that each pay period within the PAGA period incurred an underlying Labor Code violation, Plaintiffs calculate Team One’s PAGA exposure at \$271,500 (2,715 pay periods x \$100 per violation). Schmidt Decl., ¶ 18; *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties are derived from the underlying meal and rest period violations discussed above, which Team One disputes. *See e.g., Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, fn.5 (explaining that a PAGA claim’s success was determined by the merits of its underlying claims). Plaintiffs also recognize that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. *See* Schmidt Decl., ¶ 19; *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to \$5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Plaintiffs therefore discounted the maximum figure by 75% for the risk of losing on the merits of the underlying claims and an additional 75% to account for the likelihood of this Court reducing penalties, to arrive at an estimated exposure of \$16,969. Schmidt Decl., ¶ 18.

Using these estimated figures for each of the claims described above, Plaintiffs predict that a possible recovery for the Settlement Class would be approximately \$252,944. Schmidt Decl., ¶ 21. The proposed recovery to the Settlement Class of \$175,000.00 represents

1 approximately 69.2% of Plaintiffs’ projected potential recovery, while avoiding the further
2 expense and serious risk of proceeding towards class certification and trial. *Id.* Considering the
3 risk of non-certification, failure to prevail on the merits, and the Court’s power to reduce the civil
4 penalties, the proposed Settlement falls well within the realm of being fair, reasonable, and
5 adequate. *See e.g., Altamirano v. Shaw Industries, Inc.*, (N.D. Cal. 2015) 2015 WL 4512372, at
6 *9 (preliminarily approving wage and hour class action settlement, stating, “[a]lthough 15%
7 represents a modest fraction of the hypothetical maximum recovery estimated by plaintiff, that
8 figure is sufficient for the Court to grant preliminary approval given the merits of plaintiff’s
9 claims.”). Preliminary approval is appropriate since the Settlement will provide substantial
10 monetary relief to Settlement Class Members without the uncertainty, delay, and additional
11 expense of further litigation.

12 **e. The Experience and Views of Counsel**

13 “Parties represented by competent counsel are better positioned than courts to produce a
14 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
15 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented
16 by competent and experienced counsel who possess extensive experience litigating wage and hour
17 class actions from both the plaintiff and defense side and have been appointed as class counsel in
18 numerous cases alleging similar claims. *See* Schmidt Decl., ¶¶ 2-6. Class Counsel conducted an
19 extensive review of Team One’s employee records produced for mediation as well as relevant
20 policies in effect during the Class Period and drew on their extensive experience in similar cases
21 to assess the strengths and weaknesses of Plaintiffs’ case. *See* Schmidt Decl., ¶ 22. The Settlement
22 was also reached with the input and assistance of Jeffrey Krivis, Esq., an experienced and highly
23 respected neutral wage and hour class action mediator. *Id.*, ¶ 23. This factor strongly supports
24 preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

25 **2. The Preliminary Approval Standard is Met**

26 At this stage, the Court can grant preliminary approval of the Settlement and direct that
27 the Class Notice be given if the proposed Settlement: (1) falls within the range of possible
28 approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and

(3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 *Newberg on Class Actions* § 11:24-25 (4th Ed. 2013).

a. The Settlement is Within the Range of Possible Approval

The proposed Settlement reflects an excellent recovery for the Settlement Class Members in light of the significant risks of litigation. The proposed Settlement will provide compensation for contested claims and derivative penalties, and the overall average payment of \$414.52 which significantly exceeds the average payment achieved in other wage and hour class action settlements.⁴ Thus, Plaintiffs submit that the proposed Settlement is within the range of possible approval, such that notice should be provided to the Settlement Class Members so they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class Members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed, and Non-Collusive Negotiations

This proposed Settlement is entitled to an initial presumption of fairness as it is the result of the exchange of substantial information, including timekeeping and payroll data which was analyzed by Plaintiffs' counsel, arm's length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and additional months of finalizing the terms of the long-form Settlement Agreement. *See* Schmidt Decl., ¶¶ 22-23. Thus, the proposed settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130.

c. The Settlement is Devoid of Obvious Deficiencies

The Settlement will provide tangible monetary relief to Settlement Class Members.

⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); and *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately 198.70 . . . [T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90 . . . [T]he Court finds that the results achieved are good").

Moreover, the amounts proposed for Plaintiffs' enhancement awards, settlement administration costs, attorneys' fees and costs to Class Counsel, and the PAGA payment to the LWDA are all reasonable and appropriate. Because the Settlement is devoid of obvious deficiencies, this final factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS

The proposed Settlement Class satisfy the criteria for certification of a Settlement Class under California law because: (1) the individuals in the Settlement Class are so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs' claims are typical of the claims of the absent Settlement Class Members; and (4) Plaintiffs and their counsel will fairly and adequately represent the interests of the absent Settlement Class Members. *See* Cal. Code Civ. Proc. § 382.

1. The Proposed Class is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class includes all non-exempt drivers employed by Team One in California during the Class Period. According to Team One's records, the Settlement Class consists of approximately 194 individuals, rendering it impracticable to gather all Settlement Class Members and bring them before the Court. *See* Schmidt Decl., ¶ 24. Thus, the proposed Settlement Class satisfies the numerosity requirement.

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiffs' claims are primarily predicated on Team One's failure to provide all meal and rest periods. These types of claims are commonly held to be proper for class certification. *See, e.g., Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 233 (certifying meal and rest period claims).

1 **3. The Claims of the Named Plaintiffs Are Typical**

2 The typicality requirement is satisfied where class representatives have claims that are
3 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
4 Cal.App.3d 1341, 1347. Here, Plaintiffs’ claims are typical of those held by the members of the
5 proposed Settlement Class. Like other Settlement Class Members, Plaintiffs were employed by
6 Team One in California during the Class Period. *See* Declaration of James Goodine (“Goodine
7 Decl.”), ¶ 2; Declaration of Greg Crawford (“Crawford Decl.”), ¶ 2. Plaintiffs allege that they
8 were not provided with all meal and rest periods which they were entitled to. *Id.* Plaintiffs were
9 therefore impacted by the same challenged policies that allegedly injured the Settlement Class as
10 a whole and were subject to the same defenses forwarded by Team One as to the Settlement Class
11 and are therefore typical.

12 **4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent the**
13 **Class**

14 The adequacy of representation requirement examines conflicts of interest between named
15 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
16 *Developmental Services* (2007)155 Cal.App.4th 676, 697. Here, Plaintiffs and Class Counsel will
17 adequately represent the Settlement Class, as there are no conflicts between Plaintiffs and the
18 Settlement Class they seek to represent, and Plaintiffs possess claims that are in line with those
19 of the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding
20 adequacy satisfied where there was no indication that the plaintiff’s counsel were not qualified
21 and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel
22 also has extensive experience in wage and hour class action litigation. *See* Schmidt Decl., ¶¶ 2-6;
Haines Decl., ¶¶ 2-8; Rowbotham Decl., ¶¶ 2-6.

23 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
24 **CLASS NOTICE**

25 This Court should order distribution of the proposed Class Notice to the Settlement Class
26 by first class mail, postage prepaid, using the last known mailing address information provided
27 by Team One. This manner of giving notice is the “best notice practicable” under the
28 circumstances because it provides “individual notice to all members who can be identified through
reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. Plaintiffs

1 propose that the settlement be administered by Phoenix Settlement Administrators (“Phoenix”),
2 an experienced class action settlement administrator. *See* Declaration of Jodey Lawrence and
3 attached exhibits. Settlement Class Members’ addresses will be ascertainable through Team
4 One’s personnel and payroll records, which Team One will provide to Phoenix within 15 business
5 days after preliminary approval of the Settlement. Settlement, ¶ 9.A. To the extent that any notices
6 are returned, Phoenix will run those addresses through the National Change of Address database
7 and/or conduct skip traces to obtain current address information. *Id.*, ¶ 9.B. The content of the
8 proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement
9 Class Members of the nature of the claims, basic contentions and denials of the Parties, the key
10 terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and
11 the procedure by which to do so, explains the recovery formula and expected recovery amount
12 for each Settlement Class Member, and advises them that they will be bound by the terms of the
13 Settlement if they do not request exclusion. *See* Schmidt Decl. Exhibit 2 (Notice Packet). The
14 proposed Class Notice will also notify Settlement Class Members of the final approval hearing
15 date, provide the contact information for Class Counsel, and advise Settlement Class Members
16 that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving
17 notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method
18 of reaching Settlement Class Members.

19 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

20 Finally, this Court should set a hearing for final approval of the Settlement on a date
21 appropriately scheduled to follow the deadline by which Settlement Class Members must file
22 objections to, or opt-out of, the Settlement. *See* California Rule of Court 3.769.

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25 ///

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
3 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
4 Proposed Order submitted concurrently herewith.

5
6 Dated: May 27, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By:



9 Fletcher W. Schmidt
Attorneys for Plaintiffs