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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

SONNY WILLIAMS and STEVEN
RUNKLE on behalf of themselves, all others
similarly situated, and on behalf of the
general public,

Plaintiffs,

v.

HANSEN & ADKINS AUTO
TRANSPORT, INC.; HANSEN & ADKINS,
INC.; and DOES 1-100, inclusive,

Defendants.

Case No. CIVDS2020832

*[Assigned For All Purposes to the
Honorable Joseph T. Ortiz; Dept. S17]*

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
APPROVAL OF CLASS NOTICE,
SETTING OF FINAL APPROVAL
HEARING DATE**

Date: April 12, 2024

Time: 1:30 p.m.

Complaint Filed: September 25, 2020

Trial Date: None Set

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1 **I. INTRODUCTION**

2 Plaintiffs Sonny Williams and Steven Runkle (hereinafter “Plaintiffs”), on behalf of
3 themselves and the approximately 135-member putative class, respectfully request that this Court
4 preliminarily approve the Joint Stipulation and Settlement Agreement (hereinafter “Agreement”¹)
5 entered into between Plaintiffs and Defendants Hansen and Adkins Auto Transport, Inc. and
6 Hansen and Adkins, Inc. (hereinafter “Defendants” or “Hansen and Adkins”) (hereinafter Plaintiffs
7 and Defendants are collectively referred to as the “Parties”). The Parties’ Agreement seeks to
8 resolve claims raised against Defendants in this matter in exchange for a non-reversionary
9 \$3,950,000 Gross Settlement Amount. The Court previously certified a Class comprised of all
10 individuals who signed Independent Contractor Service Agreements (“ICSAs”) with Hansen &
11 Adkins Auto Transport, Inc. and worked as truck drivers for Hansen & Adkins Auto Transport,
12 Inc. in California in service of those ICSAs at any time from July 6, 2016, to June 13, 2023. It is
13 requested that the Court grant preliminary approval as, when analyzing the strengths and
14 vulnerabilities of the claims and Defendants’ potential liability exposure, this proposed settlement
15 of \$3,950,000 is well within the range of reasonableness. This settlement is estimated to pay Class
16 Members an average payment of approximately \$18,025.67.²

17 In addition, the settlement includes PAGA Aggrieved Employees. PAGA Aggrieved
18 Employees are comprised of all Class Members who worked for Defendants at any time from April
19 28, 2019, to June 13, 2023. (Exhibit 1 at Section I, Paragraph 30, Page 4). There are approximately
20 117 PAGA Aggrieved Employees. The Agreement allocates \$100,000 to civil penalties
21 recoverable under the Private Attorneys General Act of 2004 (“PAGA”), of which 75% – or
22 \$75,000 – will be paid to the LWDA; and 25% – or \$25,000 – will be distributed among PAGA
23 Aggrieved Employees. (Exhibit 1 at Section I, Paragraph 31, Page 5). PAGA Aggrieved
24 Employees are estimated to receive an average payment of approximately \$213.68.³

25 ¹ The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as
26 Exhibit 1. “Exhibit 1” herein refers to the Parties’ Agreement.

27 ² The Net Settlement Amount is approximately \$2,433,465. \$2,433,465 divided by 135 class
members = \$18,025.67.

28 ³ The PAGA Payment available for allocation to PAGA Aggrieved Employees is \$25,000. \$25,000
divided by 117 PAGA Aggrieved Employees = \$213.68.

1 The proposed Agreement satisfies all the criteria for preliminary approval under Rule 3.769
2 of the California Rules of Court. As the following sections show, Class Counsel are convinced that
3 the proposed settlement is in the best interests of the Class based on the negotiations and a detailed
4 knowledge of the issues presented in this action. The length and risks of trial and perils of litigation
5 that affect the value of the claims were all carefully weighed. In addition, the defenses asserted by
6 Defendants, the uncertainty of maintaining class certification through trial, the difficulties of
7 complex litigation, the lengthy process of establishing specific damages and various possible
8 delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed
9 settlement. The Agreement was the product of an all-day mediation with mediator Michael
10 Dickstein and extensive post-mediation settlement discussions. The Agreement was the product of
11 non-collusive, arm's-length negotiations by informed counsel and parties. The settlement is fair,
12 reasonable, and adequate. Accordingly, Plaintiffs seek: (1) preliminary approval of the terms
13 contained in the Agreement; (2) approval of the Parties' proposed notice of class action settlement⁴
14 (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class about the
15 settlement; and (3) a hearing date for final approval on July 31, 2024.

16 **II. BACKGROUND**

17 Hansen & Adkins is an automobile transport logistics provider for movement of cars from
18 point to point. It is considered a contracted carriage, as it contracts with its customers, such as car
19 dealerships, to haul cars for them. To perform the hauling services for its customers, Hansen &
20 Adkins contracts with drivers, which it classifies as independent contractors, rather than
21 employees. In California, Hansen & Adkins has dispatched these contracted drivers out of
22 terminals located in Mira Loma, Wilmington, Richmond, Milpitas, and National City. It currently
23 operates out of three terminals in California – Mira Loma, Wilmington, and Richmond. (Mara
24 Dec. ¶ 10).

25 On April 28, 2020, Plaintiff Sonny Williams provided notice to the Labor and Workforce
26 Development Agency ("LWDA") pursuant to the PAGA. Thereafter, on September 25, 2020,

27
28 ⁴ The Class Notice is attached to the Agreement as Exhibit A.

1 Plaintiff Williams filed this wage and hour putative class action against Defendants. Plaintiff
2 Williams sought to represent all individuals who have contracted with Defendants and performed
3 work in furtherance of said contracts within the state of California at any time during the period of
4 the relevant statute of limitations. Plaintiff Williams alleged that Defendants violated the
5 California Labor Code by: (1) failing to pay straight time wages; (2) failing to provide meal
6 periods; (3) failing to provide rest breaks; (4) failing to pay wages due at termination and during
7 employment; (5) failing to reimburse/illegal deductions; (6) knowingly and intentionally failing to
8 comply with itemized employee wage statements; (7) violating California's Unfair Competition
9 Law; (8) and violations of the Private Attorneys General Act of 2004. The central issues in the
10 case surround not only the causes of action Plaintiff Williams has alleged on a class-wide basis,
11 but also on whether Plaintiffs and the Class were employed by Defendants under the relevant tests
12 in California. (Mara Dec. ¶ 11).

13 On March 15, 2021, Defendants filed a motion to bifurcate and sequence discovery, which
14 Plaintiff Williams opposed. On May 25, 2021, the Court denied Defendant's motion. (Mara Dec.
15 ¶ 12).

16 On January 25, 2021, Plaintiff Williams filed a first amended complaint withdrawing his
17 causes of action for meal and rest periods. (Mara Dec. ¶ 13).

18 On March 24, 2023, Plaintiff Williams filed his motion for class certification, which
19 Defendants opposed. On June 13, 2023, the Court granted class certification of the Class for
20 Plaintiff Williams' claims for unpaid minimum wages, reimbursements under California Labor
21 Code section 2802, knowing and intentional failure to comply with itemized employee wage
22 statement provisions under California Labor Code section 226, waiting time penalties under Labor
23 Code section 203, and violation of the unfair competition law. (Mara Dec. ¶ 14).

24 On August 23, 2023, Phoenix Class Action Administration Solutions mailed a Notice of
25 Pendency of Class Action to all Class Members and Class Members had until September 22, 2023,
26 to request to be excluded from the case. No Class Members requested to be excluded, as such all
27 135 Class Members remain in this case. (Mara Dec. ¶ 15).

On February 22, 2024, Plaintiff Williams filed a Second Amended Complaint adding in an additional class representative, Steven Runkle. (Mara Dec. ¶ 16).

III. INVESTIGATION/LITIGATION HISTORY

a. Discovery and Investigation

The Parties have engaged in significant discovery. In total, Plaintiffs have propounded three sets of requests for production of documents and two sets of special interrogatories on Defendant Hansen and Adkins Auto Transport, Inc. Plaintiff Williams also propounded one set of special interrogatories and one set of requests for production of documents on Defendant Hansen and Adkins, Inc. Collectively, Defendants propounded two sets of special interrogatories, one set of form interrogatories – general, one set of form interrogatories – employment, one set of requests for admissions, and one set of requests for production of documents on Plaintiff Williams. This discovery led to Defendants producing over thirteen thousand (13,000) documents and Plaintiff Williams producing over four thousand (4,000) documents. (Mara Dec. ¶ 17).

On August 18, 2022, Defendants took Plaintiff Williams’s deposition. On August 24, 2022, Plaintiffs took the deposition of Defendants’ Person Most Qualified witness, Barry Williams. On August 30, 2023, Plaintiffs took a deposition of Defendants’ Person Most Qualified witness, Sara Khatib. (Mara Dec. ¶ 18).

Plaintiffs served an out of state commission on Vertical Alliance to obtain training videos and documents in its possession. Vertical Alliance produced documents for Plaintiff Williams on March 24, 2023. Thereafter, Vertical Alliance produced responsive documents for all Class Members. (Mara Dec. ¶ 19).

The discovery, investigation, and litigation process has been adequate to give Class Counsel a sound understanding of the value, strength, and vulnerabilities of the Class’s claims. Specifically, Class Counsel has conducted discovery and an investigation into the claims during the prosecution of this action. This discovery, investigation, and prosecution has included, among other things, analyzing the legal positions taken by Defendants and the developments in the law related to various claims, analyzing potential damages before and throughout the settlement

1 negotiation process, researching the applicable law with respect to the Class's claims and
2 Defendants' potential defenses, and assessing the risk of further litigation. (Mara Dec. ¶ 20).

3 **b. Settlement Negotiations**

4 The Parties attended a private mediation on April 22, 2022, with mediator Michael
5 Dickstein. This mediation was unsuccessful, but the Parties continued to engage in informal
6 settlement discussions facilitated by Mr. Dickstein. Mr. Dickstein issued a mediator's proposal in
7 this case which was ultimately accepted by the Parties on October 19, 2023. The Parties then met
8 and conferred over all the terms of the settlement and finalized their settlement in the Parties'
9 Agreement. The Parties seek preliminary approval of the Agreement in the instant motion. (*See*
10 Mara Dec. ¶ 21; *see also* Exhibit 1 attached thereto).

11 **c. The Parties' Staunchly Conflicting Positions**

12 **i. Employment Status**

13 Plaintiffs, and the certified Class, are truck drivers who contracted with and drove for
14 Defendants during the Class Period. Each of the Class Members was classified by Defendants as
15 an independent contractor. The core question in the case is whether Defendants correctly classified
16 the drivers as independent contractors. Plaintiffs assert that Defendants' classification was in error,
17 and that the drivers were Defendants' employees under California law. As such, all the claims
18 alleged in this matter are based on Defendants' failure to classify Class Members as employees.
19 Put differently, if Plaintiffs lose on this single issue, they will take nothing from this matter. (Mara
20 Dec. ¶ 22).

21 **ii. Plaintiffs' Underlying Claims**

22 Because Plaintiffs assert that Defendants misclassified Class Members as independent
23 contractors, Plaintiffs assert that Class Members were entitled to protections under the California
24 Labor Code that they were not afforded while working with Defendants. For example, under the
25 contracts Class Members signed with Defendants, Class Members were responsible for paying
26 business expenses such as fuel, maintenance, and insurance, that they would not be responsible for
27 if they were employees. In addition, they had to use their personal cell phones in the performance
28

1 of their work duties. Under California Labor Code § 2802, employees must be reimbursed for
2 necessary business expenses. Plaintiffs contend that Class Members should have been classified
3 as employees and, thus, should have been reimbursed for these business expenses. Plaintiffs also
4 assert that due to their alleged misclassification, they were not provided with itemized wage
5 statements and waiting time penalties that were owed to them under California law. Plaintiffs
6 further assert that the contracts they operated under only paid them for the time they were driving
7 and did not pay them for the time they were performing non-driving tasks such as pre-trip and
8 post-trip inspections. (Mara Dec. ¶ 23).

9 **iii. Plaintiffs' Claims Faced Formidable Obstacles**

10 **1. Establishing the Employment Relationship**

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

18 Based on deposition testimony and documents produced in this matter, Plaintiffs contend
19 that Defendants substantially control Class Members, and that Plaintiffs would be able to provide
20 evidence to meet the factors delineated in either the ABC employment test or the *S.G. Borello &*
21 *Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 ("*Borello*") employment
22 test to show that Class Members should have been classified as employees. (Mara Dec. ¶ 25).

23 Defendants vehemently deny these contentions. Defendants contend that an employment
24 relationship cannot be established on the basis of mandates and policies that are implemented to
25 comply with federal regulations. The contractual relationship between Defendants and the Class
26 Members is governed by the federal motor carrier leasing regulations, which set forth the
27 requirements for a written lease between the owners/lessors of motor vehicle equipment (in this
28

1 case, the Class Members) and the lessees of that equipment (in this case, Defendants).
2 Accordingly, Defendants assert that any policies it has that cover independent contractors are in
3 place to meet these requirements and cannot be used to establish an employment relationship.
4 (Mara Dec. ¶ 26).

5 Although Plaintiffs believe that Defendants' policies and rights to control go beyond
6 simply trying to comply with federal safety mandates or other federal regulations, there is a risk
7 that the Court could find in Defendants' favor. With the potential exclusion of some, many, or all
8 facts related to Defendants' control from the employment question, the probability of losing on
9 the employment issue increases. Given that a loss on that issue would result in the Class taking
10 nothing from this action, considerable weight had to be given to it in evaluating settlement. (Mara
11 Dec. ¶ 27).

12 **2. Risks on the Merits of Plaintiffs' Underlying Claims**

13 Although prevailing on the employment issue is a necessary predicate to obtaining any
14 damages here, success on the issue does not guarantee the Class will recover anything. It just gets
15 them to the next step: showing Defendants violated Labor Code section 2802 by failing to
16 reimburse Class Members for costs such as insurance, fuel, maintenance, and damage claims and
17 violated California's minimum wage laws. As the following shows, many real and considerable
18 obstacles threaten the success of these underlying claims. (Mara Dec. ¶ 28).

19 **a. The Claims Under California Labor Code § 2802 Faced 20 Risks**

21 **i. There is a Dispute About Whether the Truth-in- 22 Leasing Regulations Preempt All Expense 23 Reimbursements but Cell Phone 24 Reimbursements**

25 If litigation were to continue, Defendants would bring a motion for summary judgment on
26 Plaintiffs' business reimbursement claims under California Labor Code § 2802 on the grounds that
27 the claims are preempted under the federal Truth-in-Leasing regulations. Specifically, Defendants
28 would argue that all but Plaintiffs' claims for cell phone reimbursements are preempted and must
be dismissed. If successful, this argument would have gutted the value of the most substantial
claims in this case. District courts that have addressed this issue have reached conflicting opinions.

1 Some courts have found that expenses associated with acquiring and/or maintaining vehicles, fuel,
2 maintenance, insurance, and cargo and property damage are preempted under the federal Truth-in-
3 Leasing regulations. Others have ruled against preemption. While Plaintiffs contend the reasoning
4 in the cases that rule against the preemption is more persuasive than the cases Defendants rely on,
5 Plaintiffs had to take into consideration the prospect that Plaintiffs here would similarly succumb
6 to a preemption argument on their most valuable expense reimbursement claims. (Mara Dec. ¶ 29).

7 **ii. Defendants Argue that it Pays Class Members an**
8 **Enhanced Compensation to Cover Business**
9 **Expenses**

10 Alternatively, Defendants argue that they pay Class Members enhanced compensation to
11 cover business expenses. Defendants rely on the case *Gattuso v. Harte-Hanks Shoppers, Inc.*
12 (2017) 42 Cal. 4th 554. In *Gattuso*, the California Supreme Court held that an employer may satisfy
13 its obligation under California Labor Code § 2802 by paying employees enhanced compensation
14 in the form of increases in base pay or commission rates. In doing so, an employer must show two
15 things: (1) the employer must establish “some method or means to apportion the enhanced
16 compensation to identify what portion is intended as expense reimbursement,” and (2) it must
17 show the identified reimbursement amounts are enough to cover expenses incurred. *Id.* at 575.
18 Defendants argue that they pay Class Members an enhanced compensation and that they detail on
19 settlement sheets the amounts for compensation and the amounts of expenses. (Mara Dec. ¶ 30).

20 Plaintiffs disagree that Defendants pay Class Members an enhanced compensation and rely
21 on the case *Espejo v. The Copley Press, Inc.* (2017) 13 Cal. App. 5th 329, 367. Plaintiffs argue
22 that Defendants’ compensation is not the same as in *Gattuso* because Defendants deduct amounts
23 for costs before they pay the compensation and there is no way for drivers to identify what amount
24 is being paid for labor performed and the amount being paid as reimbursement for business
25 expenses. *See Id.* at 366-367. The suggestion that the deductions are detailed on the settlement
26 sheets was rejected by the court in *Espejo* because the settlement sheets do not “communicate that
27 the carriers were being reimbursed or compensated in the amount of the deductions stated on the
28 invoices.” *Id.* at 366. The Northern District of California in *Smith v. Cardinal Logistics*
Management Corp. found in a similar situation to the one presented here that the employer’s

1 compensation system did not satisfy *Gattuso*'s requirements for expense reimbursement through
2 enhanced compensation. *See Smith v. Cardinal Logistics Management Corp.* (N.D. Cal. Aug. 19,
3 2009) 2009 U.S. Dist. LEXIS 80758 *1. The Northern District of California in *Villalpando v. Exel*
4 *Direct Inc.* also found that employers could not meet their obligations under *Gattuso* "by simply
5 stating that their [pay] rate covers these expenses; they must provide their employees with a means
6 of determining whether these assertions are true." *Villalpando v. Exel Direct Inc.* (N.D. Cal. May
7 20, 2016) 161 F. Supp. 3d 873. However, if Plaintiffs had lost on this issue, their most valuable
8 claim would have been gutted. (Mara Dec. ¶ 31).

9
b. Plaintiffs' Unpaid Wage Claims Faced Risks

10 Plaintiffs claim the ICSAs fail to pay for non-driving time and only pay for the actual
11 hauling of cars. Thus, Plaintiffs argue when they are not driving, the ICSAs pay them nothing,
12 which violates California's minimum wage laws. Whether any compensation is owed to employees
13 is a matter determined primarily by contract which, here, would be the ICSAs. *Oman v. Delta*
14 *Airlines, Inc.* (2020) 9 Cal.5th 762, 782. Defendants argue that the ICSAs should be read to
15 compensate Class Members for all transportation related services, including non-driving time,
16 associated with transporting. As such a dispute exists as to whether the ICSAs should be read to
17 cover only driving time, or all time associated with transporting, including non-driving time.
18 Plaintiffs had to take into consideration the fact this Court or a jury could find in favor of
19 Defendants' reading of the ICSAs, which would result in Class Members taking nothing for their
20 minimum wage claims. (Mara Dec. ¶ 32).

21
c. Plaintiffs' Wage Statement and Waiting Time Penalties Claims Risks

22 As to the waiting time penalties claims, Defendants argue that Plaintiffs would not be able
23 to prove that Defendants "willfully" failed to pay Class Members the appropriate wages due upon
24 separation of employment. "A willful failure to pay wages within the meaning of Labor Code
25 Section 203 occurs when an employer intentionally fails to pay wages to an employee when those
26 wages are due. However, a good faith dispute that any wages are due will preclude imposition of
27 waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute'
28

1 that any wages are due occurs when an employer presents a defense, based in law or fact, which
2 would preclude any recovery on the part of the employee. The fact that a defense is ultimately
3 unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.* (Mara Dec. ¶ 33).

4 Defendants contend that any failure to pay wages due at the separation of employment was
5 not willful. Defendants argue that it would not be liable for waiting time penalties because a “good
6 faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral*
7 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. ¶ 34).

8 As to Plaintiffs’ wage statement claim, Defendants assert that any violation of California
9 Labor Code § 226 was not “knowing and intentional.” *See* Cal. Lab. Code § 226(e) (“An employee
10 suffering injury as a result of a **knowing and intentional** failure by an employer” may recover
11 damages”) (emphasis added); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1195 (2008)
12 (“Some statutory penalties are imposed only if an employers’ violation was ‘willful’ or ‘knowing.’
13 . . . [S]ection 226, subdivision (e) penalizes an employer’s ‘knowing and intentional’ failure to
14 provide itemized wage statements under section 226, subdivision (a)[.]”). Defendants also contend
15 that employees cannot show that they have suffered an injury because of any potential violation of
16 California Labor Code § 226. (Mara Dec. ¶ 35).

17 **d. Risks to Plaintiffs’ PAGA Claim**

18 Plaintiffs’ PAGA claims are based upon the same underlying conduct as Plaintiffs’ class
19 claims. As such, they are subject to the same risks of establishing employment status and the
20 underlying claims are subject to the same risks on the merits. (Mara Dec. ¶ 36).

21 In addition, there is the risk that the Court would reduce the maximum penalty amount, if
22 established. Section 2699, subdivision (e)(2) provides that “[i]n any action by an aggrieved
23 employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may
24 award a lesser amount than the maximum penalty amount specified by this part if, based on the
25 facts and circumstances of the particular case, to do otherwise would result in an award that is
26 unjust, arbitrary, oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.*,
27 the court found that penalties may be reduced when a defendant has taken its obligations to comply
28

1 with the law seriously. *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112,
2 1135-1136 (2012). Defendants argue that if the case were to continue in litigation, it would be able
3 to show that it took its obligations to comply with the law seriously. As such, if Plaintiffs were
4 able to prevail on the merits of their PAGA claims, the Court may reduce the maximum penalty
5 amount. (Mara Dec. ¶ 37).

6 As noted, Plaintiffs PAGA claims are based on the same alleged unlawful conduct as their
7 class claims. Because of this, the likelihood of the Court reducing the PAGA penalties awarded to
8 Plaintiffs and the Aggrieved Employees – assuming liability is proven as to each of Plaintiffs’
9 claims – is higher in this case where Class Members would be receiving damages for the same
10 conduct under both the class claims and the PAGA claims. Defendants argue that this would be an
11 unjust double recovery and would lead the Court to reducing any PAGA penalty amount. (Mara
12 Dec. ¶ 38).

13 **IV. TERMS OF THE PROPOSED SETTLEMENT**

14 Under the terms of the settlement, Defendants will create a settlement fund of \$3,950,000.

15 **a. Deductions from the Settlement**

16 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
17 action be settled and compromised for the non-reversionary total sum of \$3,950,000 (“Gross
18 Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of
19 up to \$1,316,535 (33.33% of the GSA) to compensate Class Counsel for work already performed
20 and all work remaining to be performed in documenting the settlement, administering the
21 settlement, and securing Court approval; (b) litigation costs estimated at approximately, and not to
22 exceed, \$50,000;⁵ (c) a Class Representative Service Payment to Plaintiff Williams in the amount
23 of \$20,000 and to Plaintiff Runkle in the amount of \$15,000 (\$35,000 total) in consideration for
24 prosecuting this class action, serving as Class Representatives, work performed, and risks
25

26 ⁵ These will be tabulated and presented to the Court at final approval. Plaintiffs will only seek the
27 amount of actual costs incurred during the litigation of this case. Should the actual costs exceed
28 \$50,000, Plaintiffs will only seek reimbursement of costs up to \$50,000. Should the actual costs
be lower than \$20,000, the difference will be added to the Net Settlement Amount for disbursement
to Participating Class Members.

undertaken for the payment of attorneys' fees and costs in the event they had been unsuccessful in the matter; (d) settlement administration fees and expenses to Phoenix Settlement Administrators (hereinafter "Phoenix"), estimated not to exceed approximately \$15,000;⁶ and (e) \$100,000 allocated to Plaintiffs' claims under the PAGA. Of this payment, 75%, or \$75,000 will be provided to the LWDA, and 25%, or \$25,000, will be available for distribution to Aggrieved Employees.

b. Calculation of Individual Class Settlement Shares

After all Court-approved deductions from the GSA, it is estimated that \$2,433,465 ("Net Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members.⁷ Subject to the terms and conditions of the settlement, each Participating Class Member, including Plaintiffs, will be provisionally assigned an award amount based on his or her tenure as part of the Class. To arrive at these figures, the Net Settlement Amount will be divided by the total number of weeks worked by all Class Members to arrive at a dollar value per week worked. Each Class Member's provisional award will be equivalent to the number of weeks he or she performed work for Defendants during the Class Period multiplied by the calculated amount to be paid per week worked. Any partial workweek will be expressed as a percentage of a full workweek. (Exhibit 1 at Section III, Paragraph 60(A), Page 9). This payment will be divided into a "wage portion" to compensate Participating Class Members for alleged unpaid wages and a "non-wage portion" to compensate Participating Class Members for alleged interest and penalties. The wage portion will make up 20% of each Participating Class Members' individual settlement payment, and the non-wage portion will make up 80% of each Participating Class Members' individual settlement payment. (See Exhibit 1 at Section III, Paragraph 60(B), Pages 9-10).

In addition, each PAGA Aggrieved Employee will receive a portion of the PAGA Payment (\$25,000). The allocation of the PAGA Payment to each PAGA Aggrieved Employee shall be

⁶ Phoenix will present to the Court a declaration in conjunction with the final approval motion outlining the costs of the settlement administration process. If the settlement administration costs are lower than the amount allocated in the Agreement, the difference will be added to the Net Settlement Amount for distribution to Participating Class Members.

⁷ Participating Class Members are all Class Members who do not request to be excluded from the settlement. (Exhibit 1 at Section I, Paragraph 35, Page 5).

1 calculated pro rata based on the total number of PAGA Pay Periods each PAGA Aggrieved
2 Employee worked during the PAGA Period. The pro-rata share is equal to (i) dividing the total
3 amount allocated to PAGA Aggrieved Employees by the total number of PAGA Pay Periods
4 worked by all PAGA Aggrieved Employees during the PAGA Period and (ii) multiplying the result
5 by each PAGA Aggrieved Employee's total PAGA Pay Periods. The Settlement Administrator
6 shall make these calculations based on the Class Data provided by Defendants. (Exhibit 1 at
7 Section III, Paragraph 61(A), Page 10). This payment will be treated as 100% penalties. (See
8 Exhibit 1 at Section III, Paragraph 61(B), Page 10).

9 Under no circumstances will any portion of the \$3,950,000 settlement revert to Defendants
10 and 100% of the NSA will be paid out to Participating Class Members. In addition, the employer's
11 share of taxes will be paid in addition to and outside of the GSA. (See Exhibit 1 at Section I,
12 Paragraph 20, Page 3).

13 **c. Notice to the Class**

14 Within five (5) business days after entry of the Preliminary Approval Order, Defendants
15 shall deliver to the Settlement Administrator the Class Data, in Excel format, which will list the
16 following information for each Class Member: (1) first and last name; (2) most current mailing
17 address and telephone number; (3) social security number; and (4) the respective weeks that each
18 Class Member worked during the applicable Class Period. One week before submitting Class Data
19 to the Administrator, Counsel for Defendants shall disclose to Counsel for Plaintiffs the
20 methodology used for calculating the respective weeks that each Class Member worked during the
21 applicable Class Period. Prior to mailing, the Claims Administrator will perform a search based on
22 the National Change of Address Database information to update and correct for any known or
23 identifiable address changes. (Exhibit 1 at Section III, Paragraph 64(B)(i), Pages 13-14).

24 Within fourteen (14) calendar days after receipt of the Class Data, the Settlement
25 Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class
26 Members using the mailing address information provided by Defendants and the results of the skip
27 trace performed. (Exhibit 1 at Section III, Paragraph 64(B)(ii), Page 14).

1 After notices are mailed, Class Members will have forty-five (45) days to respond to the
2 settlement. (Exhibit 1 at Section I, Paragraph 41, Page 6). Class Members may respond to the
3 settlement by requesting to be excluded from it or objecting to it. Class Members can also file a
4 dispute as to the number of workweeks attributed to them.

5 **i. Requests for Exclusion**

6 The Class Notice will provide that Class Members who wish to exclude themselves from
7 the Settlement must mail to the Settlement Administrator a written request for exclusion. The
8 written request for exclusion must: (a) state the Class Member's name, address, telephone number,
9 and the last four digits of the Class Member's social security number or employee identification
10 number; (b) state the Class Member's intention to exclude themselves from or opt-out of the
11 Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member
12 or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.
13 (Exhibit 1 at Section III, Paragraph 63(D), Page 16).

14 **ii. Objections to the Settlement**

15 The Class Notice will provide that the Class Members who wish to object to the Settlement
16 must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no
17 later than the Response Deadline. The timeframe to submit an objection will not be increased for
18 returned mailings. Any Objections shall state: (a) the objecting person's full name, address, and
19 telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in
20 clear and concise terms, the legal and factual arguments supporting the objection; (d) list
21 identifying witness(es) the objector may call to testify at the Final Approval Hearing; and (e)
22 provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval
23 Hearing. Class Members who timely file valid objections to the Settlement may (though are not
24 required to) appear at the Final Approval Hearing, either in person or through the objector's own
25 counsel, provided the objector has first notified the Settlement Administrator by sending his/her
26 written objections to the Settlement Administrator, postmarked no later than the Response
27 Deadline. (Exhibit 1 at Section III, Paragraph 63(C), Pages 15-16).

1 **iii. Disputes**

2 If a Class Member who receives a Class Notice wishes to dispute the number of work
3 weeks listed on the Class Notice, the Class Member may notify the Settlement Administrator or
4 Class Counsel by mail or telephone no later than the Response Deadline and should produce any
5 available supporting evidence, such as settlement sheets, ICSAs, and/or other records showing
6 dates on which work was performed by the Class Member to the Settlement Administrator or Class
7 Counsel. The documentation should provide evidence of the dates the Class Member contends he
8 or she worked for Defendants during the Class Period. If a Class Member contacts Class Counsel,
9 Class Counsel shall inform the Settlement Administrator of the dispute. If the Class Member
10 provides documentation to Class Counsel, Class Counsel shall forward such documentation to the
11 Settlement Administrator. The Settlement Administrator shall provide the documentation provided
12 by the Class Member to Defendants. Defendants shall review their records, the documentation
13 provided by the Class Member, and shall provide information to the Settlement Administrator in
14 response to any such disputed claim within seven (7) business days. Defendants' records shall be
15 presumed to be determinative, but the Settlement Administrator shall evaluate the evidence
16 submitted by the Class Member and Settlement Administrator make the decision as to which dates
17 should be applied. The determination by the Settlement Administrator shall be final and binding.
18 (Exhibit 1 at Section III, Paragraph 63(E), Page 17).

19 **iv. Returned Notices**

20 If a Class Notice is returned because of an incorrect address, within five (5) calendar days
21 from receipt of the returned notice, the Settlement Administrator will conduct a search for a more
22 current address for the Class Member and re-mail the Class Notice to the Class Member. The
23 Settlement Administrator will use the National Change of Address Database and skip traces to
24 attempt to find the current address. The Settlement Administrator will be responsible for taking
25 reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is
26 returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a
27 minimum, the tracking of all undelivered mail, performing address searches for all mail returned
28

1 without a forwarding address, and promptly re-mailing to Class Members for whom new addresses
2 are found. If the Settlement Administrator is unable to locate a better address through a database
3 search or skip trace, the Settlement Administrator shall call the last known phone number provided
4 by Defendants to attempt to obtain an accurate address. If an address is obtained, the Settlement
5 Administrator shall promptly re-mail the Class Notice to the updated address. If a new address is
6 obtained by a way of a returned Notice, then the Claims Administrator shall promptly forward the
7 original Notice to the updated address via first-class regular U.S. mail indicating on the original
8 Notice the date of such re-mailing. Those Class Members who receive a re-mailed Class Notice,
9 whether by skip-trace or by request, will have the later of (a) an additional fifteen (15) calendar
10 days or (b) the Response Deadline to postmark or fax a Request for Exclusion or Notice of
11 Objection to the Settlement. (Exhibit 1 at Section III, Paragraph 63(B)(iv), Pages 14-15).

12 **d. Website**

13 The Settlement Administrator shall establish a website to host documents relevant to this
14 lawsuit and the proposed settlement, i.e., the operative complaint; Defendants' answer; this Joint
15 Stipulation and Settlement Agreement, together with its exhibits; the Class Notice; the forthcoming
16 settlement motions; the Court's orders on those motions; and the Final Judgment. (Exhibit 1 at
17 Section III, Paragraph 63(G), Page 17).

18 **e. Distribution of Funds**

19 Defendants shall wire to the Settlement Administrator the Gross Settlement Amount no
20 later than twenty (20) business days of the Effective Final Settlement Date. (Exhibit 1 at Section
21 I, Paragraph 23, Page 4; *see also* Section III, Paragraph 63(K)(ii), Page 19). The Effective Final
22 Settlement Date is the later of the time when either: (i) the Judgment of the Court granting final
23 approval of the settlement is final and no longer subject to appeal, if there are objections, or (ii)
24 the date the Court enters an order on final approval of the settlement, if there are no objections.
25 (Exhibit 1 at Section I, Paragraph 19, Page 3).

26 Under the terms of the Agreement, within ten (10) calendar days of Defendants funding
27 the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement
28

1 Amount to be paid to Participating Class Members; (2) the Attorneys' Fee Award and Cost Award
2 to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class
3 Representative Enhancement Payments paid to the Class Representatives, as approved by the
4 Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the
5 LWDA and Participating Class Members, as approved by the Court. (Exhibit 1 at Section I,
6 Paragraph 18, Page 3; *see also* Section III, Paragraph 63(K)(iii), Page 19).

7 Participating Class Members must cash or deposit their Individual Settlement Share checks
8 within one hundred and eighty (180) calendar days after the checks are mailed to them. If any
9 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement
10 Administrator will send a reminder postcard indicating that unless the check is redeemed or
11 deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to
12 replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited at the
13 expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator
14 will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All
15 funds associated with the Individual Settlement Share checks returned as undeliverable and funds
16 associated with those Individual Settlement Share checks remaining un-cashed, shall be
17 transmitted by the Settlement Administrator to the California State Controller – Unclaimed
18 Property Division, with the identity of the Participating Class Member to whom the funds belong.
19 The funds shall be held by the California State Controller – Unclaimed Property Division in the
20 name of the Participating Class Member. (Exhibit 1 at Section III, Paragraph 63(M), Page 20).

21 **f. Release of Claims**

22 In exchange for an Individual Class Payment, Participating Class Members will agree to
23 the following release:

24 All Participating Class Members, on behalf of themselves and their respective
25 former and present representatives, agents, attorneys, heirs, administrators,
26 successors, and assigns, release Defendants and the Released Parties from all wage
27 and hour claims that were alleged, or reasonably could have been alleged, based on
28 the facts stated in the operative Second Amended Complaint, including claims for
misclassification of Participating Class Members as Independent Contractors.
Participating Class Members do not release any other claims, including claims for

1 vested benefits, wrongful termination, violation of the Fair Employment and
2 Housing Act, unemployment insurance, disability, social security, workers'
3 compensation, or claims based on facts occurring outside the Class Period.

4 (Exhibit 1 at Section I, Paragraph 38, Page 5)

5 In addition, all Aggrieved Employees will agree to the following release in exchange for
6 an Individual PAGA Payment:

7 Aggrieved Employees shall release Defendants and the Released Parties from any
8 and all claims for civil penalties under the California Labor Code and the Private
9 Attorneys General Act predicated upon the Labor Code violations asserted in the
10 Notice to the LWDA, the operative Second Amended Complaint, and all Certified
11 Claims of the Class and Sub-Classes.

12 (Exhibit 1 at Section I, Paragraph 33, Page 5)

13 In addition, Plaintiffs will agree to a general release of their claims in exchange for a Class
14 Representative Enhancement Payment. (See Exhibit 1 at Section III, Paragraph 66, Page 21).

15 **V. ARGUMENT**

16 **a. Class Action Settlements Are Subject to Court Review and Approval Under 17 the California Rules of Court**

18 Rule 3.769 requires court approval for class action settlements.⁸ “Before final approval, the
19 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of
20 Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of
21 class settlements:

22 (a) A settlement or compromise of an entire class action, or a cause of action in
23 a class action, or as to a party, requires the approval of the court after
24 hearing.

25 ...
26 (c) Any party to a settlement agreement may serve and file a written notice of
27 motion for preliminary approval of the settlement. The settlement agreement
28 and proposed notice to class members must be filed with the motion, and
the proposed order must be lodged with the motion.

Courts act within their discretion in approving settlements that are fair, not collusive, and
take into account “all the normal perils of litigation as well as the additional uncertainties inherent
in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167,

⁸ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
2 U.S. 905.

3 **b. The Settlement is Fair, Reasonable, and Adequate**

4 In deciding whether to approve a proposed class action settlement under Code of Civil
5 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
6 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
7 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-
8 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
9 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
10 objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these
11 elements – with the exception of the percentage of objectors, which cannot be anticipated at this
12 stage of the litigation – bearing on the fairness of the proposed settlement are present here and the
13 Court’s grant of preliminary approval is therefore requested.

14 **i. The Settlement was Reached as a Result of Arm’s-Length Negotiations**

15 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
16 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
17 nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s
18 length settlement negotiations until the settlement was reached. The terms of the settlement are
19 memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as
20 Exhibit 1. While Plaintiffs believe in the merits of their case, they also recognize the inherent risks
21 of litigation and understands the benefit of the class receiving significant settlement funds
22 immediately as opposed to risking continued litigation in achieving class certification, preparing
23 for and conducting a trial, and/or an appeal that may take several more years to litigate.

24 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

25 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
26 before reaching the proposed settlement, and engaged in sufficient investigation, research and
27 discovery to support the settlement. The settlement was only possible following investigation,
28

1 discovery, and evaluation of Defendants’ policies and procedures, as well as the data produced for
2 the putative class, which permitted Class Counsel to engage in a comprehensive analysis of
3 liability and potential damages. This litigation has reached the stage where “the Parties certainly
4 have a clear view of the strengths and weaknesses of their cases” sufficient to support the
5 settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

6 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

7 Both Plaintiffs’ Counsel and Defendants’ Counsel are particularly experienced in wage and
8 hour employment law and class actions. Plaintiffs’ Counsel has significant experience in litigating
9 unpaid wages, unprovided meal and rest periods, and wage statement claims. (Mara Dec. ¶¶ 2-9).
10 Indeed, Plaintiffs’ Counsel was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et*
11 *al.*, which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior*
12 *Court* (2012) 53 Cal.4th 1004. (Mara Dec. ¶ 4). Plaintiffs’ Counsel has prosecuted numerous wage
13 and hour class action cases on behalf of employees for California Labor Code violations and thus
14 are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial
15 on a fully informed basis, and to evaluate the viability of the defenses. This experience instructed
16 Plaintiffs’ Counsel on the risks and uncertainties of further litigation and guided their
17 determination to endorse the proposed settlement.⁹ Defendants’ Counsel practices labor and
18 employment law and have represented numerous employers in similar types of claims.
19 Accordingly, both Parties’ Counsel are experienced in wage and hour employment law and class
20 actions.

21 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

22 An understanding of the amount in controversy is an important factor in determining
23 whether the settlement “of the class members’ claims is reasonable in light of the strengths and
24 weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail,*
25 *Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los*

26
27 ⁹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
28 Class Notice has been provided to the class and they have had an opportunity to respond. This
information will be provided to the Court in conjunction with the final approval motion.

1 *Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the strength
2 of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.*

3 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
4 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
5 that of the attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit
6 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
7 provided there is a record which allows “an understanding of the amount that is in controversy and
8 the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put differently,
9 “as the court does when it approves a settlement as in good faith under Code of Civil Procedure §
10 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of
11 reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde &*
12 *Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties’
13 investigation and discovery revealed many reasons to discount claims and agree to this settlement.

14 **1. The Settlement is Fair and Reasonable Based on the Strengths
15 of Plaintiff’s Case and the Risks and Costs of Further Litigation**

16 The proposed settlement was only possible following significant discovery and an
17 evaluation of Defendants’ relevant policies and procedures. This permitted Class Counsel to
18 engage in a comprehensive analysis of liability and potential damages. The discovery conducted
19 allowed Plaintiffs to evaluate the strengths and weaknesses of their theories of liability, which are
20 predicated on Plaintiffs’ claims that Defendants misclassified drivers as independent contractors.
21 As explained herein, Defendants maintain that the discovery produced demonstrates that it would
22 succeed on the merits. While remaining confident in the strengths of their claims, Defendants’
23 defenses led Plaintiffs to discount the following maximum potential damage exposure.

24 **2. Maximum Potential Exposure**

25 The settlement encompasses approximately 18,151 workweeks. If Class Members were to
26 prevail on establishing that they were misclassified by Defendants as independent contractors, and
27 were successful in proving their underlying claims, they may be entitled to the following maximum
28 potential damages.

1 Plaintiffs allege that Defendants failed to reimburse Class Members for all business
2 expenses. Plaintiffs calculate that Class Members had approximately \$517.42 deducted from their
3 pay each workweek for expenses such as fuel, taxes, cargo claims, and insurance. If Plaintiffs and
4 the Class Members were to prevail on this claim, they may be entitled to the maximum potential
5 damages of \$9,391,690 ($18,151 \text{ workweeks} \times \$517.42 = \$9,391,690.42$). (Mara Dec. ¶ 39).

6 In addition, Plaintiffs assert that under the ICSAs Defendants only paid Class Members for
7 the time they spent driving and are owed wages for the time Class Members spent performing non-
8 driving tasks. Plaintiffs calculate that Class Members spent approximately one hour of non-driving
9 time per workweek. If Plaintiffs and the Class Members were to prevail on this claim, they may
10 be entitled to the maximum potential damages of \$231,425 ($18,151 \text{ workweeks} \times \12.75 per hour
11 $\times 1 \text{ hour} = \$231,425.25$). (Mara Dec. ¶ 40).

12 If Plaintiffs were to prevail on these claims, they and the Class Members may also be
13 entitled to wage statement penalties. Under California Labor Code § 226(e)(1), the damages for
14 breach of this section are fifty dollars (\$50) for the initial pay period in which a violation occurs
15 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
16 exceed an aggregate penalty of four thousand dollars (\$4,000). If Plaintiffs were to prevail on this
17 claim, Plaintiffs and the Class Members would be entitled to the following maximum damages:
18 \$468,000 ($\$4,000 \times 117 \text{ employees in the wage statement statute of limitations} = \$468,000$). (Mara
19 Dec. ¶ 41).

20 Plaintiffs and the Class Members may also be entitled to waiting time penalties. Plaintiffs
21 calculate the potential maximum exposure under their waiting time penalties cause of action as
22 \$208,031 ($47 \text{ formers} \times \$147.54 \text{ per day} \times 30 \text{ days} = \$208,031.40$). (Mara Dec. ¶ 42).

23 Plaintiffs also seek PAGA penalties. PAGA allows the private enforcement of certain
24 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
25 reads, in part, as follows:

26 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
27 pay period for the initial violation and two hundred dollars (\$200) for each
28 aggrieved employee per pay period for each subsequent violation.

1 The statute of limitations for PAGA violations go back one year. The maximum potential damages
2 under Plaintiffs' PAGA claim is: \$1,345,800 (\$100 x 3 PAGA violations (business
3 reimbursements, unpaid wages, and wage statements) x 4,447 pay periods = \$1,334,100 plus \$100
4 x 1 PAGA violation (waiting time penalties) x 117 pay periods = \$11,700). (Mara Dec. ¶ 43). As
5 Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as their class claims,
6 Plaintiffs' PAGA claims are subject to the same risks on the merits as Plaintiffs' class claims. In
7 addition, the Court may reduce any PAGA penalties awarded under Section 2699, subdivision
8 (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiffs and the
9 Aggrieved Employees – assuming liability is proven as to each of Plaintiffs' claims – is higher in
10 this case where these same individuals may also be receiving money for the same unlawful conduct
11 under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) 2018 U.S.
12 Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of
13 penalties granted by the underlying Labor Code violations, *see, e.g.*, Cal. Lab. Code §§
14 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to
15 award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiffs recognize that the potential
16 PAGA penalties are highly uncertain.”). As such, the Court may reduce any PAGA penalty amount
17 awarded to Plaintiffs and the Aggrieved Employees.

18 Thus, not taking into account any of their defenses or arguments, Plaintiffs estimate that if
19 they were successful in their underlying claims, Defendants' total exposure would be
20 approximately \$10,299,146 [\$9,391,690 (business reimbursement exposure) + \$231,425 (unpaid
21 wage exposure) + \$468,000 (wage statement exposure) + \$208,031 (waiting time penalties) =
22 \$10,299,146]. If Plaintiffs' claims are successful, they may also be entitled to PAGA penalties in
23 the amount of \$1,345,800. (Mara Dec. ¶ 44).

24 **3. The Settlement Amount of \$3,950,000 is Reasonable**

25 In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the
26 settlement amount of \$3,950,000 – with an average settlement share amount estimated at
27 \$18,025.67 – is a reasonable and fair settlement amount. (Mara Dec. ¶ 45).

1 It should be noted that a settlement is not judged solely against what might have been
2 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the
3 damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91
4 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139;
5 “Compromise is inherent and necessary in the settlement process...even if the relief afforded by
6 the proposed settlement is substantially narrower than it would be if the suits were to be
7 successfully litigated, this is no bar to a class settlement because the public interest may indeed be
8 served by a voluntary settlement in which each side gives ground in the interest of avoiding
9 litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688
10 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the
11 potential recovery does not...render the settlement inadequate or unfair”); *see also In re*
12 *Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, *21 , (noting that
13 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for
14 attorneys’ fees was higher than median percentage for recoveries in shareholder class action
15 settlements, averaging 2.2%-3% from 2002 through 2006).)

16 **c. Notice to the Class Complies with California Rule of Court 3.769(f)**

17 California Rule of Court 3.769(f), provides:

18 If the court has certified the action as a class action, notice of the final approval
19 hearing must be given to class members in the manner specified by the court. The
20 notice must contain an explanation of the proposed settlement and procedures for
21 class members to follow in filing written objections to it and in arranging to appear
22 at the settlement hearing and state any objections to the proposed settlement.

23 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises the
24 class of their rights to participate in the settlement, how to and when to object to or request
25 exclusion from the settlement, and the date, time, and location of the Final Approval Hearing. The
26 proposed Class Notice is attached as Exhibit A to the Agreement.

27 **VI. CONCLUSION**

28 Plaintiffs respectfully submit that the proposed settlement is in the best interests of the
Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be

1 granted final approval. Under the applicable class action criteria and guidelines, the proposed
2 settlement should be preliminarily approved by the Court, the class should be conditionally
3 certified for purposes of settlement only, and the Class Notice should be approved. Plaintiffs also
4 respectfully request the Court set a Final Approval Hearing date of July 31, 2024.

5
6
7 Dated: March 20, 2024

MARA LAW FIRM PC

8 

9 David Mara, Esq.

Jill Vecchi, Esq.

10 Attorneys for the Class
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