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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHONDRA BROWN, individually and on behalf of other similarly situated individuals, PLAINTIFFS, vs. SPT HOLDINGS, LLC, BSP SHIPPING, INC., and DOES 1-20, inclusive, DEFENDANTS.	Case No. 20STCV27895 (Los Angeles) (And related matter of Alameda County Superior Court Case No. RG20068718) **NOTICE & UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** **Complaint Filed: July 21, 2020** **Trial Date: Not Set**
And Related Matter – Alameda Superior Court Case No. RG20068718	

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that plaintiffs Chondra Brown, Anthony Wicket and Corbett Dotson ("Plaintiffs") on behalf of themselves and others similarly situated, will and hereby do move this Court for approval of the proposed settlement in this case on **September 10, 2025 at 10:00 am in Dept. 7** of this Court. Specifically, Plaintiffs will move for an Order:

1. Granting class certification of the BSP and RFL Classes for settlement purposes only under Code of Civil Procedure section 382:
2. Approving the Class Action and PAGA Settlement Agreement (hereafter, the "Settlement");
3. Appointing Plaintiffs Chondra Brown, Anthony Wicket and Corbett Dotson as Class Representatives;
4. Appointing the following firms and attorneys as class counsel: Olesia Boulaev and Eric Levine of the Levine Firm, APC; Steven M. Sweat, APC; Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco of Advocates for Worker Rights LLP; and Jessica Juarez, Esq.;
5. Approving the class notice process as stated in the Settlement;
6. Approving Phoenix Class Action Administration Solutions as the Settlement Administrator; and
7. Entering a judgment on the Settlement.

The motion is unopposed and based upon the Settlement Agreement attached to the Declaration of Olesia Boulaev, filed herewith. Further, the motion is made on the following grounds: (1) the Class meets all the requirements for class certification for settlement purposes pursuant to Code of Civil Procedure section 382; (2) Plaintiffs and their counsel are adequate to represent the Class; (3) the Settlement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims in this case; (4) the class notice procedure fully comports with all due process requirements; and (5) in view of the foregoing, the Settlement should be approved, class notice should be disseminated to Class Members, and the Order and Judgment Granting Approval of Class Action/PAGA Settlement should be entered.

This Motion will be based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, Declarations of Olesia Boulaev and Marco Palau, exhibits attached thereto argument of counsel at the time of hearing, and upon such other material contained in the file and pleadings in both this action and the related case of Wicket and Dotson v. Roman Freight Lines, et.al. (Alameda County Superior Court Case No. RG20068718).

DATED: August 25, 2025

THE LEVINE FIRM, APC

By: olesia boulaev

OLESIA BOULAEV, Attorneys for plaintiff, CHONDRA BROWN, on behalf of herself and all others similarly situated

I. MEMORANDUM OF POINTS & AUTHORITIES

A. Introduction

This settlement involves two class actions brought on behalf of drivers employed by Defendants SPT Holdings and its two subsidiaries, Roman Freight Lines and BSP Shipping: *Brown v. SPT Holdings, LLC et al.*, pending in the Superior Court of California, County of Los Angeles (the lead case filed on July 21, 2020), and *Dotson et al. v. Roman Freight Lines, Inc., et al.*, pending in the Superior Court of California, County of Alameda (filed on July 23, 2020 (together "the Litigation"). The Litigation covers approximately 364 BSP Shipping drivers and 34 Roman Freight drivers. BSP drivers are paid hourly, whereas Roman Freight drivers are paid by the load. SPT Holdings has operated three transportation divisions under one family: Roman Freight, BSP Shipping, and Wade Transport. However, the company has recently rebranded, changing its name to "Revo" but continuing to operate what appears to be the same three divisions: (1) "Freight," a linehaul service provider that employs Class A drivers and has Amazon as a major client; (2) "Express," a Class B carrier that employs drivers with a Class B license; and (c) "Ground," a FedEx Ground contractor. "Freight" appears to be the new name for Roman Freight, and "Express" is the new name for BSP Shipping. SPT HOLDINGS, Inc. ("SPT"), BSP SHIPPING, Inc. ("BSP") and ROMAN FREIGHT LINES, Inc. ("RFL") are hereinafter collectively referred to as "Defendants".

Plaintiff Dotson was a former Roman Freight driver. Plaintiff Wickett drove for Roman Freight and BSP Shipping, and Ms. Brown was a BSP driver. Plaintiffs collectively asserted claims for failure to provide rest and meal breaks under California Labor Code §226.7, failure to pay separately for rest periods and non-productive time for piece-rate employees under California Labor Code §226.2, failure to reimburse business expenses under California Labor Code §2802, failure to provide accurate wage statements under California Labor Code §§ 226 and 226.2(a)(2), and failure to pay final wages under California Labor Code §§ 201-202. Upon filing the Litigation, counsel for all plaintiffs were contacted by counsel for all defendants and advised that the Litigation was related and would need to be consolidated. Counsel for plaintiffs were further advised that there was an alleged agreement to arbitrate all claims, which also allegedly contains a waiver of class action claims. At that time, counsel for plaintiffs in both actions agreed to stay the Litigation, conduct preliminary discovery and investigation into the allegations and to conduct a mediation with a private mediator in an attempt to resolve the Litigation in an expeditious manner. The parties exchanged information and engaged in informal discovery and then conducted a mediation with mediator Jeffrey Krivis on January 6, 2022. The mediation resulted in a settlement agreement by all parties in the Litigation.

After resolving the matter at mediation and after Plaintiffs had moved for preliminary approval of the settlement, but before the Court had ruled on the motion, Defendants communicated to Plaintiffs that their financial position had drastically deteriorated and would need to renegotiate the settlement agreement, as they had unexpectedly lost significant business revenue and were facing potential bankruptcy. Defendants presented Plaintiffs' counsel with a variety of financial records that evidenced a significant reduction in their ability to pay the agreed upon settlement. These documents included: (i) January 2021-December 2022 Profit & Loss Statement; (ii) January – December 2022 Balance Sheet; (iii) June 2023 Financial Forecast & Cashflow; and (iv) January – March 2023 Consolidated Balance Sheet. After careful review of the above documentation and based upon the sworn representations of Mathew Pabon, CEO of Revo Group (formerly Defendant SPT Holdings, LLC), a new settlement amount was agreed upon.

The renegotiated settlement is based upon the parties' conclusions that all interested parties would benefit from settlement, even at a reduced amount, in light of the sharply disputed factual and legal issues involved in the Litigation, the risks associated with further prosecution, and the benefits to be received as set forth in the Settlement Agreement under the best terms possible given the company's financial condition. Plaintiffs believe that the interests of the parties and proposed class members are served by the proposed settlement, which is fair and reasonable under the circumstances.

II. TERMS OF THE SETTLEMENT

B. The Class, Class Period, and Allocation of Settlement Funds

Under the renegotiated Settlement Agreement reached (an exact copy of which is attached as **Exhibit "2"** to the Declaration of plaintiff's counsel, Olesia Boulaev, the parties wish to resolve all matters in the Litigation on the following terms and conditions:

Settlement Class and Class Period: Defendants will stipulate, for purposes of this settlement only, to certification of a class defined as: : (i) "BSP Subclass": defined as all hourly nonexempt drivers who worked for Defendant BSP in California within the BSP Class Period from January 1, 2018 to January 31, 2021; and (ii) "RFL Subclass": defined as all nonexempt drivers paid on a piece-rate basis (or flat or daily rate) and employed by Defendant Roman Freight Lines at any time during the RFL Class Period from September 1, 2019 to September 9, 2022.

Gross Settlement: Defendants will pay $250,000, which is referred to as the "Gross Settlement Amount," plus employer-side payroll taxes for the portion of the settlement that is characterized as wages, to settle the Litigation on behalf of the Settlement Class. The settlement amount shall be non-reversionary.

Net Settlement Amount: Net Settlement amount will be calculated by subtracting the following from the Gross Settlement: Plaintiffs' counsel's attorneys' fees and costs; the portion of the PAGA payment allocated to the Labor Workforce and Development Agency ("LWDA"); Plaintiffs' Class Representative Service Awards; and the Settlement Administrator's reasonable fees and expenses not to exceed $12,500. Class Members will be paid their pro-rata share of the Net Settlement Amount based upon total workweeks (i.e., pay periods) worked during the Class Period, by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Class member's number of pay periods worked during the Class Period and the denominator of which is the total pay periods worked by the Class member during the Class Period.

The parties have agreed to use Phoenix Class Action Administration Solutions ("Phoenix") to administer the settlement. The cost of this settlement administration will not exceed $12,500. Class counsel's attorneys' fees and costs will be paid out of the Gross Settlement amount. Class counsel will apply for attorneys' fees of 1/3 of the Gross Settlement Amount ($83,333) and reimbursement of costs incurred by class counsel not to exceed $30,000. This amount does not include the cost of settlement administration which is not to exceed $12,500 and which the parties have agreed to be paid out of the Gross Settlement Amount.

The parties agree to allocate the amount of $5,000 from the Gross Settlement Amount to settle Plaintiffs' PAGA claim ("PAGA Settlement" or "PAGA Payment"), 75% of which will be paid the

LWDA and 25% of which will be distributed to the PAGA aggrieved employees (defined as all non-exempt employees who have worked for the defendants as drivers in California at any time from July 21, 2019 to September 9, 2022. The individual PAGA shares will be calculated based upon the aggrieved employee's relative number of paychecks received during the PAGA Period.

The plaintiffs will provide a general release with a waiver of any rights afforded under California Code of Civil Procedure section 1542, with the exception of a carveout of the individual claims of Plaintiff Chondra Brown for alleged workplace safety violations and retaliation for complaints re: same. Plaintiff Chondra Brown has reached a separate settlement of those individual claims that were not wage-related (Los Angeles Superior Court Case No. 21STCV31642). Under the new agreement, the parties have agreed to narrow the class release to exclude non-wage and hour claims asserted on behalf of the class in in the *Brown* class action. See Settlement Agreement §§ 2.1.1. and 6.2.

A. Class Notice Procedure and Administration

No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

If the Administrator, DEFENDANTS or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than [14] days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

The Settlement is a "checks-mailed" settlement. There is no need to make a claim. This process entails the Settlement Administrator mailing settlement checks to each Class Member who has not opted-out of the Settlement and whose address the Administrator is sufficiently able to confirm with a skip trace search following the return of the Class Notice Packet. Following preliminary approval of the Settlement by the Court, the Settlement Administrator will mail a Class Notice Packet to each of the approximately 400 Class Members detailing the terms of the Settlement and how a Class Member can request exclusion from the Settlement or object to the terms of the Settlement. (Settlement § 8.4.) If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly search for a more current address for the Class Member using reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class Member. (Id. § 8.4.3.) Based on experience, Class Counsel believes that the notice procedure established by the Settlement Agreement will ensure an effective and efficient procedure to provide Notice to the approximately 400 drivers who are potential members of the Class.

(Palau Decl.[1] at ¶¶27, 29, 35.)

III. THE TWO STEP APPROVAL PROCESS AND THE PRESUMPTION OF FAIRNESS

Any settlement of class litigation must be reviewed and approved by the Court in two steps as follows: (1) a preliminary review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment and objections. The standard on step one is whether the proposed settlement appears to be the product of "serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to any class representative or segment ... .and falls within the range of possible approval . . .." *Manual for Complex Litigation (Second Edition) at section 30.44*. Thus, the preliminary approval of the trial court is just a conditional finding that the settlement appears to be within the range of acceptable settlements and the court may find that the settlement proposal is presumptively valid subject only to any objections that may be raised at the final hearing. *4 Conte and Newberg, Newberg on Class Actions, section 11.26 (4th Edition – 2002).*

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless contrary evidence is offered and there is a presumption that the negotiations were conducted in good faith. *Id.* at *section 11:51*; citing *United States v. Oregon* (9th Cir. 1990) 913 F.2d. 576, 580. Courts do not substitute their judgment for that of the proponents, particularly where the settlement was reached with the participation of experienced counsel familiar with the litigation. *Id.* at *section 11.44*.

The Court issued the order granting the preliminary approval in this case on October 22, 2024.

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR AND REASONABLE

"In approving the settlement of a class action, a court exercises its discretion in determining

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[1] Declarations of Marco Palau that contain facts in support of this motion and referenced herein were filed with the Court on June 17, 2022; March 25, 2024; and June 17, 2024. The October 22, 2024 order granting the preliminary approval motion in this case is based upon these declarations.

whether the settlement is fair and reasonable." *Oldham v. California Capital Fund, Inc.* (2003) 109 Cal.App.4th 421, 431. The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A decision approving a class action settlement may be reversed only upon a strong showing of clear abuse of discretion. (See *id.*)

A presumption of fairness exists where: (1) the settlement was reached through an arms' length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation. *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794. A proposed settlement is not to be measured by hypothetical ideal results but must also consider the "uncertainty of the outcome of any litigation" and the "avoidance of wasteful and expensive litigation." *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150.

Courts consider several factors in determining if a class action settlement should be approved, including: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. (See *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th at 128.)

The proposed settlement here satisfies each of the applicable factors. The substantial and relevant informal discovery exchanged by the parties prior to mediation with Jeffrey Krivis permitted Plaintiffs and their counsel to fairly evaluate the strengths of the case and the risks associated with ongoing litigation. (Palau Decl. at ¶¶37-42.) Further, Plaintiffs' counsel are experienced in wage-and-hour class actions and support this Settlement. (*Id.* at ¶¶4-7; Boulaev Decl.[2])

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[2] Declarations of Olesia Boulaev that contain facts in support of this motion and referenced herein were

Well in advance of the mediation, Defendants provided relevant information pursuant to the parties' discovery stipulation. Decl. M. Palau at ¶16. Defendants produced time, payroll, and personnel files regarding Dotson and Wickett, as well as data for 19 RFL drivers and 35 BSP drivers. Id. The data was produced in electronic format. Id. Specifically, for the BSP Class, Defendants produced a spreadsheet listing all BSP drivers within the class period along with their dates of hire and termination. Defendants also produced a spreadsheet with time and payroll data for 35 BSP drivers. Id. The data included rates of pay, timecard details, and payroll reports. Id. This data, along with other information of Ms. Brown and Mr. Wickett, was provided to Bennett Berger of Berger Consulting for analysis. Id.

Prior to producing class data, Defendants had produced documents relating to Dotson and Wickett in response to a records request made pursuant to Labor Code sections 226, and 1198.5 Id. at ¶17. This included timekeeping information, pay information, and policy documents. Id. Pursuant to the discovery stipulation, Defendants produced three spreadsheets of data relating to the RFL class: (1) a list of all drivers in the RFL class with their dates of hire and termination; (2) payroll data for eight drivers randomly chosen, and (3) route/timekeeping data for a random sample of 19 RFL drivers paid on a piece-rate basis. This information was also given to Berger Consulting for analysis. Id.

Following the settlement of the matter at mediation, Defendants communicated to Plaintiffs that their financial position had drastically deteriorated and would need to renegotiate the settlement agreement due to a loss of significant business revenue. Decl. M. Palau at ¶ 4. Defendants presented various financial records and a declaration from CEO Mathew Pabon. Id. at ¶ 5. Upon a careful review of Defendants' records and representations by Plaintiffs' counsel, the parties were able to resolve the matter. Id. at ¶ 6. The revised Settlement, despite being a reduced amount, remains reasonable and in the best interest of all

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filed with the Court on June 24, 2022; March 25, 2024; March 26, 2024; June 17, 2024; and July 29, 2024. The October 22, 2024 order granting the preliminary approval motion in this case is based upon these declarations.

parties. Id. at ¶ 7.

A. The Settlement in this Case Is the Product of Arm's Length and Informed Negotiations

This settlement was reached following extensive arm's length negotiations before mediator Jeffrey Krivis that lasted an entire day. The parties conducted themselves in a professional manner, but the negotiations were adversarial with both sides advocating their positions regarding their view of the strengths and weaknesses of the claims of the Settlement Class, and the potential defenses including but not limited to Federal Preemption of certain claims under the Federal Motor Carriers Act as well as the potential for compelled arbitration and class waiver based upon alleged agreements to that effect.

B. The Settlement Was Reached After Extensive Investigation, Discovery and Analysis of the Class Claims and Is Within a Reasonable Range

Prior to the mediation, the defendants responded to plaintiffs' request for extensive payroll documents which yielded information and documentation concerning the claims set forth in the Litigation. This included obtaining sampling of time and payroll records for the Class during the Class Period, hire and separation dates for the Class members during the Class Period, Defendants' employee handbook and other policies and procedures in effect during the Class period, total number of class members during the Class Period, and average hourly rate. It also included documentation of the piece rate calculation, number of drivers and other applicable information for the RFL subclass. Plaintiff's counsel prepared an extensive mediation brief with attachments of payroll and related documentation and included extensive analysis of timekeeping records, wage statements, breakdown of typical workdays for drivers, driver hubs and geographic location of drivers, class size, estimated number in any PAGA pool, workweeks, pay periods and the number of separated employees during the applicable time period. Plaintiffs engaged a damages expert to analyze the records and data and to create an analysis of potential damages. The expert analysis, discovery, and counsel's investigation were used to evaluate the strength of Plaintiff's case. (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th at 128.)

Meal and Rest Periods: Based upon the data analysis, the RFL drivers were denied compliant meal periods and the BSP drivers were provided compliant meal periods, but not until approximately March 9, 2020. However, liability was disputed at the mediation with defense arguing very limited potential exposure, particularly because rest and meal period claims are potentially preempted by federal hours of service regulations, as determined by the Federal Motor Carrier Safety Administration (FMCSA). While the records might show a relatively strong case for non-compliant meal periods during a portion of the class period, there is potentially very limited liability for these claims under recent authority. (See *Espinoza v. Hepta Run, Inc.* (2022) 74 Cal.App.5th 44, *review denied* (Apr. 27, 2022).)

While Plaintiffs believe they could prevail on the rest period claim, by its nature it is a challenging claim because California law does not require employers to record rest periods, and thus the violation typically has to be proven by testimonial, documentary, or other evidence that might exist. In this case, it was not apparent that Defendants had an unlawful rest period policy and Plaintiffs were not able to obtain sufficient data, such as GPS or route data, that would enable them to perform a reliable analysis showing rest period violations.

Unreimbursed Business Expenses: This claim was based upon the drivers' requirement to use their cell phones to track loads, deliveries, etc. Pre-mediation estimate of exposure was modest for this claim. Defendants claim that such expenses were reimbursed and that to the extent they were not, it was very minimal.

Wage Statement Violations: The wage statement exposure for the class derived from the alleged failure to compensate drivers correctly. Thus, any penalties owed would obviously be contingent upon proving the actual violations first, which were disputed by defendants. If proven, plaintiffs would still have to establish that the failure to pay premiums resulted in inaccurate wage statements, an issue that was before the California Supreme Court in the case of *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, *review granted* January 2, 2020 at the time the initial settlement was negotiated.

Failure to Pay Separately for Rest Periods and Non-Productive Time for Piece Rate Employees: This applied only to the RFL drivers (a fairly small percentage of the total Class). The strength of this claim depends on (a) establishing that the method of paying by the load is tantamount to a piece rate, which is disputed, and (b) that Plaintiffs could meet class certification requirements for this claim. Plaintiffs expect that Defendants would assert that the pay scheme was not uniform among RFL drivers, and that the question of whether the pay scheme was a piece rate or not was highly individualized based on the alleged existence of individualized agreements with each driver. Considering the class size and anticipated defenses, there was also a possibility that numerosity could not be met. While this claim is strong with respect to Plaintiffs, it poses significant challenges on a class basis.

Failure to Pay Final Wages: This probably had the highest estimated exposure according to the pre-mediation analysis of Class Counsel. There were approximately 366 BSP employees that were terminated and 26 RFL employees terminated during the Class Period. However, this claim is again contingent upon prevailing on the underlying issues and, at the time of the mediation, on the outcome of *Naranjo v. Spectrum*. Under *Naranjo*, failure to pay rest and meal period premiums does not trigger waiting time penalties.

***Dunk/Kullar* Analysis:**

1. **Description of Damages and Penalties Totals**

Plaintiffs relied on data produced by Defendants to estimate potential damages for mediation. The following figures show the potential exposure Plaintiffs estimated with the assistance of their expert:

RFL Claims	Wages & Statutory Penalties	PAGA Penalties
Nonproductive Time (NPT) RFL Class LC 226.2	$373,821	$120,500
Waiting Time Penalties RFL Class LC 203 for 26 terminated employees	$222,559	$2,600
Wage Statement Penalties LC 226	$69,200	$301,250
Cell Phone Reimbursement RFL Class LC 2802 (w/out interest)	$17,558	$120,500

MAXIMUM EXPOSURE RFL CLASS	$683,138	$544,850

BSP Claims	Amount	PAGA Penalties
Meal Period BSP Class LC 226.7	$564,857	$757,300
Rest Period BSP Class LC 226.7	$585,010	$757,300
Cell Phone Reimbursement BSP Class LC 2802 (w/out interest)	$133,842	$757,300
	$1,283,709	$2,271,900

(Supp Palau Decl. ¶ 4.)

Plaintiffs' expert estimated the amount of nonproductive time (NPT) based on the assumption that drivers had an estimated 3.98 hours of NPT per shift. This figure was based on the delta between total time and drive time, and the assumption that the payment per load did not cover all activities during the shift. This NPT figure was then applied to all shifts and extrapolated to the entire class, which resulted in a total of 9,864 hours of NPT owed to the class at an average rate of pay of $36.04 per hour ($355,509), plus interest ($18,311). The expert estimated the waiting time penalties based on the assumption that drivers worked an estimated 7.9 hours per day on average, and there were 26 former RFL drivers at the time of the analysis. The expert estimated that drivers earned $285.33 daily and multiplied this amount by 30 days and 26 drivers to arrive at the total waiting time penalties. Wage statement penalties were computed per code at $50 for the initial pay period and $100 for each subsequent pay period, with a $4,000 cap on penalties. Finally, cell phone expenses were calculated at $60 per month. (Supp Palau Decl. ¶ 5.)

For purposes of mediation, the PAGA Penalties for the NPT claim were calculated at $100 per pay period based on Labor Code section 2699(f). Labor Code section 2699(f) was also used to calculate waiting time penalties, $100 per 26 terminated employees at the time of mediation. Civil penalties for the wage statement claim were originally calculated at $250 per pay period. However, the lesser penalty amount pursuant to Labor Code section 2699(f) may be more applicable since the defendants provided wage statements, but plaintiffs alleged they were inaccurate. (See *Gunther v. Alaska Airlines Inc.* (2021) 72 Cal.App.5th 334.) Finally, the civil penalty for cell phone reimbursements was calculated at $100 per pay period pursuant to Labor Code section 2699(f). The expert estimated 1,205 pay periods within the PAGA period. (Supp Palau Decl. ¶ 6.)

For the BSP class, the expert estimated meal period damages based on observed meal period noncompliance in the sampling of data. This included untimely, short, and missed meal periods. For each noncompliant meal period, the expert applied a meal premium, and then extrapolated that amount to the entire class using a multiplier of 12.602. There were 2,483 observed violations, and an estimated 31,291 class-wide. At an estimated average wage of $15.10 per hour, the potential damages for the meal period claim were estimated at $472.512 plus $94,991 in interest. Total potential exposure for the rest break claim was based on the assumption that each shift greater than 3.5 hours had a non-compliant rest period based on anecdotal reports from drivers, as there was no timekeeping information reflecting rest breaks. Using the same average hourly rate, a rest premium was applied to each shift greater than 3.5 hours, yielding a total of $564,857 in potential damages, including interest. Finally, cell phone reimbursements were calculated at $60 per month per BSP driver. (Supp Palau Decl. ¶ 7.)

PAGA Penalties for the meal period, rest period, and cell phone reimbursement claims were calculated at $100 per pay period based on Labor Code section 2699(f) for purposes of mediation. However, the lesser penalty amount of $50 per pay period may apply to meal periods and rest periods, pursuant to Labor Code section 558. The expert estimated 7,573 pay periods within the PAGA period. (Supp Palau Decl. ¶ 8.)

2. Declaration from Defendants Evidencing Financial Situation

Plaintiffs attach the declaration provided by Mattew Pabon on behalf of the Defendants. (See Exhibit 1 to Supp. Palau Decl.)

3. Fairness of PAGA Amount

"[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5h 56, 77.) The re-negotiated settlement allocates $5,000 to PAGA out of a gross settlement of $250,000. The amount allocated to PAGA is fair, reasonable, and adequate in view of PAGA's purpose, because the amount provided to the class by this settlement, in light of the financial condition of the defendants, serves the purpose of remediating labor law violations and both deter future violations while maximizing enforcement of the state's labor laws.

Where PAGA claims are settled in the same agreement with the underlying Labor Code claims, courts look at the interplay of the class and PAGA recoveries to determine whether PAGA's purposes have been served. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 971–74.) Courts have applied a "'sliding scale,' noting that '[b]y providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.'" (*Haralson*, 383 F. Supp. 3d at 973; *O'Connor*, 201 F. Supp. 3d at 1134.) District Courts have also noted that, "where the settlement of Labor Code claims under Rule 23 provides 'robust' relief to the class, it supports a greater reduction in PAGA penalties." (*Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016) 2016 WL 5907869, at *9.)

Here, the PAGA settlement is fundamentally fair, adequate, and reasonable in light of the policies and purposes of PAGA. Members of the class will receive as much monetary relief for their California Labor Code claims as was possible under the financial constraints faced by Defendants. Therefore, this settlement will both vindicate the rights of Defendants' workers, while serving to deter Defendants from engaging in the alleged violations described in this action, i.e., failure to pay for nonproductive time, reimburse expenses, and provide proper breaks. Through this action, Plaintiffs are enforcing the Labor Code, even if the settlement is discounted due to Defendants' financial condition, and Plaintiffs believe that the purpose of PAGA is equally served in this case by allocating a major portion of settlement funds to the class instead of the LWDA, as Plaintiffs do not believe it was possible at the time of the settlement to obtain a higher settlement sum due to Defendants' potential bankruptcy. For these reasons, the proposed allocation to the LWDA is fair reasonable, and adequate in view of PAGA's purpose.

Monetary Terms:

There are 36 RFL class members and 364 BSP class members. (Supp. Palau Decl. ¶ 3.) Plaintiffs believe that the payment formula for class members, without a difference in value for the RFL class vis a vis the BSP class is adequate in light of recent developments in the law. At the time of the original settlement, it appeared that the rest and meal period requirements for truck drivers were preempted under the Federal Motor Carriers Act (FMCA). This rule was then extended to short haul drivers. (See *Espinoza v. Hepta Run, Inc.* (2022) 74 Cal.App.5th 44, *review denied* (Apr. 27, 2022).) However, in November 2023, the State of California formally requested a waiver of FMCA preemption of rest and meal period rules, and should the waiver be granted, rest and meal period rights may apply to BSP drivers.

Further, Plaintiffs did not assign much value to the waiting time and wage statement claims of the BSP class because, at the time of the mediation, rest and meal period violations could not serve as predicates for waiting time and wage statement penalties under *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444. However, in May 2022, after the original settlement was reached, the Supreme reversed the lower court, holding that nonpayment of rest and meal premiums *could* support a claim for failure to provide accurate wage statements and/or failure to pay all wages due at the time of termination. (*Naranjo v Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93.)

Under the changed circumstances, the estimated value of the RFL class's claims is not exceptionally higher than the value of the claims held by BSP class members. As such, the the previous formula does not appear to be justified under present circumstances and law.

C. Plaintiffs' Case Involves Significant Risks if Litigated Further

In contrast the certain financial benefits of the proposed settlement for the Class Members, continued litigation of these issues involves significant risk. (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th at 128 (considering the risk, expense, complexity, likely duration of further litigation, and the risk of maintaining class action status through trial).) As noted above, Defendants represented to Plaintiffs and the Court that they were unable to pay the previous amount agreed upon, and that they could only afford to pay $5,000 monthly for 50 months. Otherwise, the company would have to seek bankruptcy protections or fail. These claims were supported by a sworn declaration of the CEO submitted to the Court, and financial records, as well as representation from defense counsel and bankruptcy counsel who held numerous discussions with Plaintiffs' counsel. Plaintiffs' counsel relied on the representations as well as their own experience and the expertise of Steven M. Sweat, counsel for Plaintiffs in this action.

In addition, Defendants have asserted numerous affirmative defenses to the claims made including federal preemption under the Federal Motor Carriers Act, the potential application of the reasoning in *Oman v. Delta Airlines* (2020) 9 Cal.5th 762 to certification of a piece-rate RFL class, as well as arbitration agreements that purport to contain class action waivers. On the **preemption** issue, Class Counsel considered current case law including the 9th Circuit Court of Appeals decision in 2021 (*International Brotherhood of Teamsters v. Federal Motor Carrier Safety Administration* 18-73488 (9th Cir. 2021), which may be construed to pre-empt California law on meal and rest breaks by the standards set forth in the FMSCA guidelines, which are much less stringent. A decision issued this past January 2022 in this district held that federal preemption of rest and meal break rules applies to short haul drivers. (See *Espinoza v. Hepta Run, Inc.*, supra.)

Many of these and other defenses raised may be dispositive of the entire case by way of a Summary Judgment or Adjudication and/or severely limit the ability to pursue the matter on a class-wide basis. Moreover, the issue was raised that defendants had allegedly signed a class action waiver and agreement to arbitrate and Class counsel took into account the recent trend under Federal Law to uphold these types of agreements (e.g. *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333; *Epic Systems Corp. v. Lewis* (2018) 138 S. Ct. 1612; and the upcoming case to be argued later this month – *Viking River Cruise, Inc. v. Moriana* (U.S. Sup. Ct. – Docket No. 20-1573).

Plaintiffs also faced significant risk for many of the claims. For example, the rest period claim for the BSP class faced significant challenges in terms of certification and proof. Certification of a rest period claim based largely on class member declarations renders certification less certain if Defendants obtain declarations showing that the issue is individualized. Regarding meal periods for the BSP class, Plaintiffs were reasonably confident of certifying the class through trial for both the early part of the class period where no meal periods were recorded, as well as later in the class period when meal periods are recorded but there are still some instances of late, short, or unrecorded meal periods. Notwithstanding this cautious confidence, Plaintiffs remained cognizant of the fact that an adverse determination on predominance was still possible, as the court could determine that individualized issues predominate in determining whether drivers were provided a 30-minute lunch despite timekeeping records showing non-compliance.

There is also a risk of complex, expensive and protracted litigation. Plaintiffs believe that the issue of rest and meal period preemption and the uncertain nature of the pay scheme for RFL drivers increase the likelihood of appeals and extensive and costly litigation. Further, the calculation of unpaid nonproductive time is complicated and would likely require data obtained by third parties and significant expert expense. Defendants possess driver logs and payroll records but do not possess data that might show the portions of the day when drivers are performing compensable nonproductive work with more precision. This potentially includes data showing (i) the time that drivers are required to arrive at the customer warehouse to pick up a load; (ii) the time drivers actually arrive at the warehouse; (iii) the time drivers are performing administrative work at the warehouse such as scanning, gathering paperwork, reporting to warehouse personnel, etc.; (iv) the time the driver departs the warehouse with a load; (vi) drop off times at customer warehouses; and (vii) data indicating vehicle breakdowns, fueling, maintenance, etc. Plaintiffs believe certain third parties may possess some of this data, but that it may be costly to obtain and analyze. In counsel's experience, the expert costs to perform database analysis involving different types of data can be complex and expensive. Given the specter of a potential bankruptcy filing as an alternative to further litigation, even a reorganization filing could potentially put the class in a category of creditors that would be much lower than many other categories, leaving the possibility of little or no payment to the Class.

D. Class Counsel are Experienced Class Action Litigators and Have Made an Informed Decision

The Advocates for Workers Rights, LLP, co-counsel, Jessica Juarez, the Levine Firm APC, and Steven M. Sweat, APC have a combined level of experience that spans decades. Palau at ¶¶ 4-7; Decl. O.

Boulaev. These attorneys have experience in litigating wage and hour claims both individually and as class and PAGA claims. Decl. M. Palau at ¶¶ 4-7; Decl. O. Boulaev. These attorneys have done extensive due diligence as described above in examining payroll records, company policies and procedures, and analysis of both the facts and the applicable law in this case. Decl. M. Palau at ¶¶37-42; Decl. O. Boulaev. This led to an informed and calculated decision to settle the claim for the amounts and terms stated above.

E. Conclusion of Class Counsel That Settlement Amount Was Reasonable

Based upon the thorough investigation of the facts, Class Counsel believes that the settlement amount of $250,000 is not only within the reasonable standard but constitutes an excellent result for the Class. Given the nature of any litigation especially complex class action litigation, there would inevitably be further written discovery, numerous depositions, potential discovery dispute law and motion, summary judgment and/or adjudication motions. Thus, after careful analysis, Class counsel and Plaintiffs have concluded that this settlement is in the best interest of the Class Members. Decl. M. Palau at ¶38; Decl. O. Boulaev.

V. EMPLOYMENT OF A CLAIMS ADMINISTRATOR IS REASONABLE

It is standard practice to employ the services of a claims administrator for a class this size (i.e. 400 employees). Class counsel intends to retain an administrator (Phoenix Class Action Administration Solutions) that they have used in the past and that charges very reasonable fees. Decl. M. Palau at ¶ 45.

VI. THE NAMED PLAINTIFFS SHOULD BE AWARDED THE REQUESTED ENHANCEMENT

In deciding the amount of an enhancement award for a class representative, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation. *Cook v. Niedart* (7th Cir. 1988) 142 F.3d 1004, 1015. The guiding standard in determining the amount of an incentive award can also consider the personal risk attached, the time spent assisting the litigation, the factual expertise provided, and other burdens suffered by the plaintiffs and the recovery.

The present matter has been pending for approximately five years. In that time, the named plaintiffs have provided significant support to the Litigation. Without their knowledge and factual expertise in providing the average workday routines and their providing needed payroll and related documentation, the analysis needed to come to an informed decision on settlement would not be possible. Moreover, they risked both their current and future employment (e.g. referrals) to help bring this matter and obtain justice for the other employees affected by the illegal wage scheme. The requested amount of $15,000 per plaintiff is completely reasonable given their efforts and risks associated with representing the class members.

VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

An appropriate method for awarding attorneys' fees and costs in class actions is to award a percentage of the "common fund" created as a result of the settlement. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and the "lodestar" methods); *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Id.* @ 769. Moreover, the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110. The reason for applying this doctrine includes the following: (1) "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by expenses; (2) correlative prevention of an unfair advantage to others who are entitled to share in the fund and who should bear their share of the burden of its recovery; (3) encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id*. The alternative "lodestar approach" has seen disfavored due to necessitating "wading through voluminous and often indecipherable time records". *In re Activision Securities Litigation* (ND Cal 1989) 723 F. Supp 1373, 1375. The percentage approach is preferable to the lodestar method because of the following: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable settlement; and (3) it reduces the demand for judicial resources. *Id.* at 1378-1379. This is why the common fund approach is routinely used to determine attorney's fees awards in many cases. (E.g. *In re: Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-379 – approving an attorney's fee of 33.3%).

Plaintiffs' counsel in the present case is requesting to use the "common fund" method and is requesting a very reasonable percentage of recovery (i.e., 33.3%). Historically, courts have awarded percentage fees in a range of 20-50% with 50% being the upper limit so that the fees do not "consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." *Newberg on Class Actions* at section 14.03. "Achievement of a substantial recovery even with modest hours expended should not be penalized but should be rewarded for considerations of time saved and superior services performed. Id. at section 14.01, pp. 14-10:1411.

In the present case, class counsel has borne the risk and costs of bringing this case forward on a pure contingency basis. The legal and factual issues were difficult to analyze and required extensive time and effort. This matter has been going on for about a year and 8 months and in that timeframe, plaintiff's counsel has conducted thorough investigation, discovery and analysis and conducted a full day mediation. Class counsel will further incur time and resources in finalizing any settlement and distribution to the Class Members and the representative plaintiffs. A one third of gross recovery fee is more than reasonable for these efforts and is fully supported by State and Federal Law on this issue.

The costs of the Litigation are detailed in the Declarations of Olesia Boulaev and Marco Palau submitted herewith.

VIII. THE PAGA AWARD IS REASONABLE

The settlement of a PAGA claim requires court approval pursuant to the PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (See Labor Code §2699(1)(2).)

As with any settlement, the Court must be mindful in conducting its inquiry that settlement is a compromise, which balances the possible recovery against the risks inherent in litigating further. (See *In re TD Ameritrade Account Holder Litig.* (N.D. Cal. September 13, 2011) 2011 WL 4079226, *14-15.) In fact, "the very essence of a settlement is … 'a yielding of absolutes and an abandoning of highest hopes,'" because "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 624-625). Accordingly, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id.* at 625).

Given that the class members are receiving the bulk share of the Net Settlement Amount, the $5,000 apportioned for PAGA payment should be deemed reasonable. This will provide some, additional funds for the "aggrieved employees" and will provide funds to the LWDA for purposes of future enforcement actions.

IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

The two prerequisites for certification in California are as follows: (1) the existence of an "ascertainable class", and (2) "a well-defined community of interest in the questions of law and fact involved in the parties to be represented." Daar v. Yellow Cab Co. (1967) 67 Cal.2d 695, 704. In addition, California Civil Code Section 1781(b) provides the following:

> "The court shall permit the suit to be maintained on behalf of all members to the represented class if all the following conditions exist: (1) It is impracticable to bring all members of the class before the court. (2) The questions of law and fact common to the class are

> substantially similar and predominate over the questions of individual members. (3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class. (4) The representative plaintiffs will fairly and adequately protect the interests of the class."

Each of these criteria can be satisfied in the present case:

Adequate Number of Class Members: California law requires only that there be enough class members to "inure to the benefit of the judicial system." Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 462, 470. Defendants identified 400 potential class members from their time and payroll records. This exceeds the number required to satisfy the numerosity requirement.

Common Questions of Law and Fact: Common issues predominate when they would be the "principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." Vazquez v. Superior Court (1971) 4 Cal.3d 800, 810. Furthermore, common questions need only be "sufficiently pervasive to permit adjudication in a class action rather than a multiplicity of suits." Id.

In the present matter, the common issues include whether the employees of the same company or related entity were provided meal and rest breaks, compliant wage statements, proper calculation of wages for piece rate work and whether they were properly reimbursed for business expenses. Therefore, the commonality requirement is met.

Typical Claims: Typicality requires only that the claims of the named plaintiff's be significantly similar to those of other class members. Richmond 29 Cal.3d at 74-75. A representative plaintiff's claims are typical of class member claims if they arise from the same event, practice or course of conduct that gives rise to the claims of other class members. Miller v. Woods (1983) 16 Cal.App.3d 862, 874.

In the present case, the representative plaintiffs and the class members are all truck drivers for the same company or a related entity. Furthermore, they are all seeking payment of alleged unpaid wages and/or unreimbursed business expenses plus any penalties and interest allowed by law. Therefore, the typicality criteria are met.

Adequacy of Representation: Adequacy of representation requires two components as follows: (1) No disabling conflicts of interest between the representatives and the class; and (2) representation by competent and experienced legal counsel. McGhee v. Bank of America (1975) 44 Cal.App.3d 852, 863.

The class representatives and the other class members are all in the same shoes. They are all truck drivers being paid under the same or similar payment scheme that they all allege to be illegal. This creates no disabling conflict of interest. Moreover, as has been discussed above, the class is being represented by two law firms with multiple attorneys that have decades of experience in wage and hour litigation and in class action related matters. Therefore, the adequacy of representation requirement has been satisfied.

The California Supreme Court has "repeatedly emphasized the importance of the class action device for vindicating rights asserted by large groups of persons." Keating v. Superior Court (1982) 31 Cal.3d at 469. This case is a prime example of the superior adjudicatory method of class claims. It would be very difficult, time consuming and expensive to litigate these wage claims individually. If the action satisfies the statutory criteria, the court must certify the class. Hogue v. Superior Court (1977) 75 Cal.App.3 122 and "a lesser standard of scrutiny applies when evaluating these criteria for purposes of settlement. Amchen Products Inc. v. Windsor (1977) 521 U.S. 591, 620. This Class meets all the requirements for certification and should be certified for the purpose of finalizing the Settlement.

X. CONCLUSION

The Settlement in this case is fair, adequate, and reasonable under the circumstances. It was negotiated in good faith after extensive document exchange and analysis and a full day mediation with competent counsel and an experienced employment mediator. The Court should grant final approval of the Settlement and execute the proposed Order and Judgment.

DATED: August 25, 2025

Respectfully Submitted,
THE LEVINE FIRM, APC

By: olesia boulaev
Olesia Boulaev, Esq. Attorneys for Plaintiff