

Brian J. Mankin, Esq. [SBN 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [SBN 295611]
peter@lmlfirm.com
LAUBY MANKIN LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ROBERT THREADGILL, individually, on
a representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DECKER TRUCK LINE, INC., a Iowa
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVDS2018856
*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

**PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT; DECLARATIONS IN
SUPPORT THEREOF; [PROPOSED]
ORDER**

Hearing

Date: March 27, 2023

Time: 10:00 a.m.

Dept.: S26

Complaint filed: August 6, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 27, 2023, at 10:00 a.m. or as soon thereafter as
the matter may be heard by the Honorable David Cohn in Department S26 of the San Bernardino
County Superior Court, located at 247 West Third Street San Bernardino CA 92415, Plaintiff
Robert Threadgill ("Plaintiff"), individually and on behalf of all others similarly situated, will
and hereby does move the Court for entry of an Order preliminarily approving the Parties' class
action and PAGA Settlement, including:

1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
4. Preliminarily approving the class action and PAGA Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or object to, the settlement with respect to Class Claims;
6. Setting a date for a final fairness hearing to determine, following dissemination of the Class Notice, whether to grant final approval of the Settlement.

This motion is based upon this Memorandum of Points and Authorities in Support thereof; the Declaration of Plaintiff's counsel (Brian Mankin) in support thereof; the Class Action and PAGA Settlement Agreement and Release of Claims (the "Settlement Agreement" or "S.A."); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this Action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: November 23, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Attorneys for Plaintiff and the Proposed
Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Robert Threadgill (“Plaintiff” or “Class Representative”) seeks preliminary
4 approval of a \$700,000 wage-and-hour class action and PAGA Settlement (the “Gross
5 Settlement Amount”) on behalf of approximately 109 putative Class Members, which includes
6 all current and former truck drivers who resided in California and who were employed by
7 Defendant Decker Truck Line, Inc. (“Defendant” or “Decker”) at any time between August 6,
8 2016, and November 12, 2022 (the “Class Period”).

9 The payment to each Participating Class Member under the Settlement Agreement is
10 based on the number of Weeks Worked by each Participating Class Member for Defendant
11 during the Class Period, as determined by hire date, re-hire date(s) (as applicable), and separation
12 date(s) (as applicable). The Class Action and PAGA Settlement Agreement and Release of
13 Claims is attached as Exhibit “A” to the Declaration of Brian Mankin (“Mankin Decl.”), and is
14 hereinafter referred to as the “Settlement Agreement” or “S.A.” The proposed Notice of
15 Settlement of Class and Representative Action (the “Class Notice”) is attached to the Mankin
16 Declaration as Exhibit “B.”

17 Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiff
18 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
19 \$233,333.33 which is 1/3 of the Gross Settlement Amount, Plaintiff Counsel’s litigation
20 expenses not to exceed \$20,000, Settlement Administrator Costs not to exceed \$5,500, PAGA
21 Penalties of \$50,000 (of which \$37,500 or 75% will be paid to the LWDA and the remaining
22 \$12,500 or 25% will be paid to the Aggrieved Employees on a pro rata basis), and a Service
23 Payment to Plaintiff as the Class Representative not exceed \$10,000. (S.A. ¶ 51(a)-(h)).

24 After all Court-approved deductions from the Gross Settlement Amount (the “Net
25 Settlement Amount”), it is estimated that \$381,166.67 will be available to pay the Participating
26 Class Members, as follows:

27 ///

28 ///

	Total Amount
<i>Gross Settlement Amount</i>	\$ 700,000.00
Attorneys' Fees (1/3)	\$ 233,333.33
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 5,500.00
PAGA Penalties	\$ 50,000.00
Class Representative's Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 381,166.67

Assuming 109 Participating Class Members, the average Individual Settlement Payment to each Participating Class Member will be approximately \$3,496.94 (\$381,166.67 / 109). Of course, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Participating Class Member. Assuming an estimated 7,000 Weeks Worked, each Week Worked will have a value of approximately \$54.45 on average (\$381,166.67 / 7,000). In addition, approximately 70 Aggrieved Employees—which includes all current and former truck drivers who resided in California and who were employed by Defendant at any time between August 6, 2019, and November 12, 2022 (the “PAGA Period”)—will receive a pro rata share of the \$12,500 PAGA Penalties (accounting for 25% of the total \$50,000 allocation). Moreover, the Aggrieved Employees collectively had approximately 4,500 Weeks Worked during the PAGA Period. (Mankin Decl. ¶ 9).

The Settlement is non-reversionary and Class Members will not be required to submit claim forms to receive payment, but each Class Member will receive the Class Notice containing information about his/her share, the opportunity to dispute the number of Weeks Worked, and the opportunity to opt-out or object to the Settlement with regards to Released Class Claims. All Class Members who do not affirmatively opt-out (“Participating Class Members”) will receive an Individual Settlement Payment upon the Court granting final approval of the Settlement. Likewise, all Aggrieved Employees will receive a share of the PAGA Penalties once the Settlement receives final approval.

Because the Settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully

request that the Court enter an order preliminarily approving the Settlement, conditionally certifying the Settlement Class under Code of Civil Procedure § 382 for settlement purposes only, approving the proposed Class Notice, appointing Plaintiff's counsel as Class Counsel, appointing ILYM Group as the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

II. BACKGROUND

A. THE SETTLEMENT CLASS

The Settlement Class is defined as follows:

All current and former truck drivers who resided in California and who were employed by Defendant Decker Truck Line, Inc., at any between August 6, 2016, and November 12, 2022. (S.A. ¶¶ 6, 37).

B. PROCEDURAL HISTORY

At the outset of the case, Plaintiff submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), and simultaneously sent a letter to Defendant requesting the production of his personnel and timekeeping records in order to further evaluate his wage and hour claims. (Mankin Decl. ¶ 12).

On August 6, 2020, Plaintiff filed a class and representative PAGA action complaint against Defendant (the "Complaint") in the Court alleging claims for: (1) failure to pay minimum wages, (2) failure to pay for rest and recovery periods under Labor Code § 226.2, (3) failure to provide rest breaks, (4) failure to provide meal periods, (5) failure to reimburse for business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code §§ 17200 *et seq.*, and (9)-(16) related claims under PAGA. (Mankin Decl. ¶ 13).

Defendant retained counsel and filed a Motion to Quash Service of Summons and Complaint based on the theory that the Court did not have personal jurisdiction over Defendant. On July 27, 2021, the Court heard arguments and denied Defendant's Motion to Quash. Then, on August 6, 2021, Defendant filed a Petition for Writ of Mandate to the Court of Appeal, which was summarily denied on August 16, 2021. Defendant then filed a Petition for Review with the

1 California Supreme Court on August 26, 2021, which was denied on October 20, 2021.
2 Thereafter, Defendant filed its Answer to the Complaint on or around November 1, 2021.
3 (Mankin Decl. ¶ 14).

4 Plaintiff then moved forward with discovery and began a meet and confer process over
5 allegedly deficient responses, and an informal discovery conference was held on April 11, 2022.
6 However, class discovery was stayed by agreement due to Defendant's filing of a Motion for
7 Summary Judgment/Adjudication (the "MSJ") as to all of Plaintiff's individual claims in the
8 Complaint on February 14, 2022. (Mankin Decl. ¶ 15).

9 On June 14, 2022, after full briefing and hearing argument from counsel, the Court
10 granted summary adjudication in Defendant's favor as to Plaintiff's Third, Fourth, Eleventh, and
11 Twelfth Causes of Action (based on FMCSA preemption of meal period and rest break claims),
12 but the Court denied the MSJ in all other respects. (Mankin Decl. ¶ 16).

13 After the Court's ruling on Defendant's MSJ, Plaintiff and Defendant (collectively, the
14 "Parties") agreed to stay further proceedings and attend private mediation. In preparation for the
15 mediation, the Parties informally exchanged documents and information that allowed both sides
16 to calculate the potential damages and evaluate potential risk, including policies and procedures
17 pertaining to each claim alleged, and statistics relating to, *inter alia*, the number of current and
18 former Class Members/Aggrieved Employees, number of Weeks Worked and pay periods,
19 number of issued driver settlement summaries (wage statements), average percentage of miles
20 driven in California, and other things. Defendant also provided its written policies and practices
21 and confirmation regarding the uniform payroll and timekeeping practices for Class Members.
22 This information enabled both Parties to take a deep dive into the claims alleged. Additionally,
23 during this process, Plaintiff and his counsel analyzed, researched, and investigated the potential
24 issues, including matters related to the calculation of damages, trial, and appellate issues and
25 risks. (Mankin Decl. ¶ 17).

26 On September 13, 2022, Plaintiff and Defendant participated in mediation before Steven
27 Rottman, a highly regarded wage-and-hour mediator. The matter resolved pursuant to a
28 mediator's proposal, and the Parties memorialized the terms of the Settlement in the long-form

1 Settlement Agreement. (Mankin Decl. ¶ 18). The Parties now seek the Court’s preliminary
2 approval of the Settlement.

3 **C. SUMMARY OF THE CLAIMS AND DEFENSES**

4 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members and
5 Aggrieved Employees. However, Defendant vigorously contested and denied Plaintiff’s material
6 allegations on the merits and as to the propriety of a class action or PAGA representative action.

7 One of the primary claims in this Action is for alleged underpayment of minimum wages
8 due to Defendant’s piece-rate (per-mile) pay policy. Under this policy, Plaintiff alleges that the
9 Class Members were only paid for miles driven and were not compensated for non-driving tasks
10 such as fueling, pre- and post-trip inspections, among other tasks. However, Defendant raised a
11 strong challenge to these claims by arguing that the policy was compliant because it was
12 intended to (and did) compensate for all hours worked, including non-driving time, in
13 accordance with *Ayala v. U.S. Xpress Enters.* (C.D. Cal. June 9, 2020) 2020 U.S. Dist. LEXIS
14 102991 and *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal.5th 762. Although the Court ruled that
15 triable issues of material fact existed as to the validity of Defendant’s argument prior to August
16 2020 (when the unwritten policy was reduced to writing), thereby precluding summary
17 judgment, Plaintiff and Defendant both anticipated that this was a claim that would be
18 challenged all the way to the California Supreme Court.

19 Plaintiff also alleged claims for wage statement violations under Labor Code § 226.
20 During the statutory period, Plaintiff alleges that Defendant provided the Class with wage
21 statements that failed to contain the total hours worked each period as required by § 226(a)(2).
22 However, Defendant raised a variety of defenses to this claim, including that (1) Plaintiff and the
23 Class were not entitled to protections of California law since they did not work a “majority” of
24 their time in California or have a base of work operations in California, and (2) Plaintiff would
25 be unable to prove the required “knowing and intentional” and “injury” elements under § 226(e)
26 and, thus, no liability would attach.

27 Plaintiff further alleged that Defendant failed to reimburse Class Members for use of their
28 personal cell phones for work-related purposes. Defendant, however, argued that any such

1 alleged cell phone use was neither required nor necessary, since Decker's trucks are equipped
2 with electronic communication devices that enable drivers to receive load and shipping
3 information, track hours of service and duty status changes, obtain routing directions, scan and
4 upload paperwork, and communicate with dispatch via messaging.

5 Plaintiff also alleged various other Class and PAGA claims relating to the claimed
6 violations mentioned above. However, Defendant argued that these type of "derivative" claims
7 have no merit.

8 Despite the disputed nature of the claims, the Parties concluded that further litigation of
9 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
10 finally settled to limit further risk, expense, and protracted litigation.

11 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

12 The following is a summary of the principal terms of the Settlement Agreement.

13 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

14 The \$700,000 Gross Settlement Amount is non-reversionary and will be paid out to
15 Participating Class Members without the need to submit a claim form or take any affirmative
16 action. It includes (1) Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a
17 service award of up to \$10,000 to Plaintiff, subject to approval by the Court; (3) Settlement
18 Administrator expenses, not to exceed \$5,500; (4) a \$50,000 PAGA award, 75 percent of which
19 is to be paid to the LWDA pursuant to Labor Code § 2699(i) and 25 percent to the Aggrieved
20 Employees; and (5) the aggregate of all Individual Settlement Amounts of the Participating Class
21 Members. (S.A. ¶ 51(a)-(h)). Defendant will separately pay its share of employer's payroll taxes
22 due on the wage portions of the Individual Settlement Payments. (S.A. ¶ 51(a)).

23 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
24 that \$381,166.67 will be available to pay the Individual Settlement Payments to approximately
25 109 Class Members. Thus, the average Individual Settlement Payment is approximately
26 \$3,496.94.

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28 ///

1 **B. NOTICE PROCEDURES**

2 The proposed Class Notice will be provided to the Class Members showing the estimated
3 amount that each Class Member will receive and the number of Weeks Worked he/she is
4 credited (Exhibit B to the Mankin Decl.). Within 14 calendar days after entry by the Court of its
5 Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list
6 of Class Members containing names, addresses, telephone numbers, Social Security Numbers,
7 and the total Weeks Worked in the Class and PAGA Periods (the “Class Data”). (S.A. ¶¶ 5, 69).

8 Within 10 calendar days of receipt of the Class Data, the Settlement Administrator shall
9 calculate the number of Weeks Worked for each Class Member, populate the Class Notice for
10 each, and send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶
11 70).

12 In the event that any Class Notice mailed to a Class Member is returned as having been
13 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
14 search and seek an address correction for such Class Member(s), and a second Class Notice will
15 be sent to any new or different address obtained. (S.A. ¶ 71).

16 **C. EXCLUSION AND OBJECTION PROCEDURES**

17 Class Members who do not timely Opt-Out of the Settlement with respect to the Released
18 Class Claims will be deemed to participate in the Settlement and shall become a Participating
19 Class Member without having to submit a claim form or take any other action. To Opt-Out of
20 the Settlement of the Class Claims, the Class Member must submit a written request to the
21 Settlement Administrator no later than 30 calendar days after being mailed by the Settlement
22 Administrator (the “Notice Response Deadline”). (S.A. ¶¶ 19, 20, 74). Any Opt-Out request
23 that is not postmarked by the Notice Response Deadline will be invalid. (S.A. ¶ 74(a)).

24 The Class Notice shall inform the Class Members of their right to object to the Settlement
25 of Released Class Claims. Any Class Member who wishes to object to the Settlement of Class
26 Claims must submit a written objection to the Settlement Administrator no later than the Notice
27 Response Deadline. The objection must include the case name and number and must set forth, in
28 clear and concise terms, a statement of the reasons why the objector believes that the Court

1 should find that the proposed Settlement of Class Claims is not in the best interest of the Class
2 and the reasons why the Settlement should not be approved, including the legal and factual
3 arguments supporting the objection. (S.A. ¶ 74(c)).

4 Class Members and Aggrieved Employees may not object or Opt-Out of the Settlement
5 with respect to the PAGA Released Claims. (S.A. ¶¶ 72, 74(a), 74(c)).

6 **D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

7 The amount of each Settlement Class Member's Individual Settlement Amount is tied to
8 the number of Weeks Worked by each Settlement Class Member for Defendant during the Class
9 Period, based on the Class Member's hire date, re-hire date(s) (as applicable), and separation
10 date(s) (as applicable). Individual Settlement Payments will be made as follows:

11 • Defendant will calculate the total number of Weeks Worked by each Settlement
12 Class Member during the Class Period and the aggregate total number of Weeks Worked by all
13 Settlement Class Members during the Class Period.

14 • To determine each Settlement Class Member's estimated Individual Settlement
15 Payment, the Settlement Administrator will use the following formula: The Net Settlement
16 Amount will be divided by the aggregate total number of Weeks Worked, resulting in the
17 "Workweek Value." Each Settlement Class Member's Individual Settlement Payment will be
18 calculated by multiplying his or her total number of Weeks Worked during the Class Period by
19 the Workweek Value.

20 • Individual Settlement Payments will be reduced by any required deductions for
21 each Participating Class Member as specifically set forth in the Settlement Agreement, including
22 employee-side tax withholdings and deductions.

23 • The entire Net Settlement Amount will be disbursed to all Participating Class
24 Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator
25 shall proportionally increase the Individual Settlement Payment for each Participating Class
26 Member according to the number of Weeks Worked, so that the amount actually distributed to
27 the Settlement Class equals 100% of the Net Settlement Amount. (S.A. ¶ 51(c)).

28 ///

1 Additionally, each Aggrieved Employee will receive a share of the PAGA Penalties
2 based on a pro-rata basis. Thus, the \$12,500 PAGA Penalties allocated to the Aggrieved
3 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 51(h)).

4 The Class Notice will inform Class Members of the estimated share and the number of
5 Weeks Worked he/she worked during the Class and PAGA Periods. Class Members may dispute
6 their Weeks Worked if they feel they should be credited with more Weeks Worked in the Class
7 and/or PAGA Periods than Defendant's records show by timely submitting evidence to the
8 Settlement Administrator. (S.A. ¶ 72).

9 As noted, assuming a class size of 109 Class Members, the average payment to each
10 Class Member will be approximately \$3,496.94 each, although the actual payment will be
11 calculated on a pro-rata basis as shown above. Assuming an estimated 7,000 Weeks Worked,
12 each Week Worked will have a value of approximately \$54.45 on average. Indeed, this is a good
13 result for the Class Members.

14 Moreover, it is estimated that there are 70 Aggrieved Employees who worked an
15 estimated 4,500 Work Weeks/Pay Periods during the PAGA Period. The Aggrieved Employees
16 will share in the \$12,500 PAGA award on a pro rata basis.

17 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

18 Defendant is required to deposit the Gross Settlement Amount, along with the employer's
19 share of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
20 "Effective Date" and these funds will be used to pay: (1) the class attorneys' fees and expenses,
21 as approved by the Court; (2) Plaintiff's service award, as approved by the Court; (3)
22 administrative expenses, as approved by the Court; (4) a \$50,000 PAGA award; and (5) the
23 aggregate of all Individual Settlement Amounts of Participating Class Members. (S.A. ¶¶ 12,
24 75). Within 10 calendar days after deposit of the Gross Settlement Amount, the Settlement
25 Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 76).

26 Participating Class Members and Aggrieved Employees will have 180 calendar days to
27 cash their settlement checks. If a Participating Class Member or Aggrieved Employee fails to
28 cash his/her check by the deadline, then the Settlement Administrator shall issue the unclaimed

1 funds to the California State Controller in the name of the Class Member or Aggrieved
2 Employee. (S.A. ¶ 77).

3
4 **F. TAX TREATMENT**

5 The Parties agree that one-third (33.34%) of the Individual Settlement Payments will be
6 allocated as wages subject to withholding of all applicable local, state and federal taxes; one-
7 third (33.33%) will be allocated as penalties (pursuant to, e.g., Labor Code sections 203, 210,
8 226, etc.) from which no taxes will be withheld; and one-third (33.33%) will be allocated as
9 interest from which no taxes will be withheld. (S.A. ¶ 51(d)). Defendant will separately pay its
10 share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 51(a)). Additionally, the
11 PAGA Penalties payable to Aggrieved Employees will be classified entirely as civil penalties
12 and shall be reported as required on an IRS Form 1099. (S.A. ¶ 51(h)).

13 **G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLASS CLAIMS**

14 In exchange for the Individual Settlement Payments, the Settlement Agreement provides
15 that Participating Class Members will release the Released Parties of the following "Released
16 Class Claims":

17 All claims stated in the Complaint and those based solely upon the
18 facts in the Complaint, including: (a) failure to pay minimum wages,
19 (b) failure to pay for rest and recovery periods under Labor Code §
20 226.2, (c) failure to reimburse business expenses, (d) failure to
21 failure to timely pay wages upon separation of employment, (e)
22 failure to provide accurate itemized wage statements, (f) unfair and
unlawful competition, and (g) all other claims that reasonably could
have arisen out of the allegations made and based on the facts
alleged in the Complaint.

23 (S.A. ¶¶ 30, 31, 55). The time governing the release of Class Claims shall be the same as the
24 Class Period. (S.A. ¶ 55).

25 It is understood and agreed that the Settlement Agreement will not release any person,
26 party or entity from claims, if any, by Class Members for workers compensation, unemployment,
27 or disability benefits of any nature, nor does it release any claims, actions, or causes of action
28 which may be possessed by Settlement Class Members under state or federal discrimination

1 statutes including, without limitation, the Cal. Fair Employment and Housing Act, the Cal.
2 Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code § 51, et seq.;
3 the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.;
4 the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee
5 Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and all of their
6 implementing regulations and interpretive guidelines.

7 **H. AGGRIEVED EMPLOYEES' RELEASE OF PAGA CLAIMS**

8 The Settlement Agreement also defines the “PAGA Released Claims” as follows:

9 The PAGA claims that Plaintiff alleged against the Released Parties,
10 on behalf of the Aggrieved Employees and the State of California,
11 based on the facts stated in the Complaint and in the relevant LWDA
12 notice letter, including all PAGA claims seeking civil penalties
13 premised upon: (a) failure to pay minimum wages, (b) failure to pay
14 for rest and recovery periods under Labor Code § 226.2, (c) failure
15 to reimburse business expenses, (d) failure to failure to timely pay
16 wages each period, (e) failure to timely pay wages upon separation
17 of employment, (f) failure to provide accurate itemized wage
18 statements, and (g) all other claims for civil penalties recoverable
19 under PAGA based on the facts or claims alleged in the Complaint.

17 (S.A. ¶ 24). The time governing the PAGA Released Claims is August 6, 2019, through
18 November 12, 2022 (the “PAGA Period”). (S.A. ¶¶ 23, 57). Moreover, even if an Aggrieved
19 Employee requests exclusion from the Settlement of Released Class Claims, that individual will
20 still be subject to the PAGA Released Claims to the fullest extent permitted by law and will
21 receive a pro-rata share of PAGA Penalties. (S.A. ¶¶ 72, 74(a), 74(c)).

22 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
23 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
24 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

25 California Rule of Court 3.769(d) provides that the Court may make an order approving
26 certification of a provisional settlement class at the preliminary approval stage. It is well-
27 established that trial courts should use a “lesser standard of scrutiny” for determining the
28 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*

1 Co. (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
2 a settlement class, so the case management issues inherent in determining if the class should be
3 certified need not be confronted; and the trial court’s fairness review of the settlement protects
4 the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil*
5 *Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification
6 determination and the merits of the case is further attenuated within the context of the settlement
7 evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short
8 of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
9 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
10 certification, a district court need not inquire whether the case, if tried, would present intractable
11 management problems . . . for the proposal is that there be no trial.”). As discussed below, for
12 the purposes of this Settlement only, Plaintiff requests that this Court provisionally certify the
13 Settlement Class, as defined above, under Code of Civil Procedure § 3150.

14 **A. NUMEROSITY AND ASCERTAINABILITY**

15 Numerosity is met if a proposed class is so large that joinder of all members would be
16 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
17 the class members can be objectively identified and given notice of the litigation without
18 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
19 89, 101. Here, according to Defendant’s records, there are over 100 Class Members. This figure
20 satisfies the numerosity requirement.

21 **B. WELL-DEFINED COMMUNITY OF INTEREST**

22 **I. Commonality**

23 To justify certification, the class proponent must show that questions of law or fact
24 common to the class predominate over the questions affecting the individual members. *See*
25 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*
26 *v. Superior Court* (2001) 24 Cal.4th 906, 913). Plaintiff contends that the Class was subject to
27 common policies and practices relating to the payment of wages and expense reimbursement,
28 among other things. While the Parties dispute whether a class would be appropriate if litigation

1 were to continue, they agree to class certification for the purposes of this Settlement only.

2 2. Typicality

3 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
4 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
5 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
6 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
7 Action, but agree for the purposes of this Settlement only, that Plaintiff asserts claims regarding
8 Defendant’s expense reimbursement, wage statements, and the provisions governing the timely
9 and complete payment of wages, which are at the core of the lawsuit.

10 3. Adequacy of Representation

11 The proposed class representative must establish that he or she will adequately represent
12 the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
13 546. Specifically, Plaintiff is adequate to represent the Settlement Class because he was
14 employed by Defendant as a truck driver during the Class Period, experienced the same wage
15 and hour practices as the rest of the Class, understood his duties as a Class Representative, has
16 been willing to undergo the risks of litigation, and has no conflict of interest.

17 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
18 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
19 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
20 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

21 4. Superiority

22 Certification of the Class for settlement purposes is superior here because there will be a
23 global resolution of all claims at once, which fosters judicial economy. Class certification for
24 settlement purposes is also vastly superior to litigation of numerous individual claims because
25 most of the claims are too small to litigate outside of the class context.

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1 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,**
2 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

3 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND**
4 **APPROVAL UNDER THE CALIFORNIA RULES OF COURT**

5 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is
6 particularly true in class actions where substantial resources can be conserved by avoiding the
7 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
8 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California
9 Rules of Court set forth the procedures for court approval of a class action settlement: (1) the
10 Court preliminarily approves the settlement; (2) class members receive notice as directed by the
11 Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the
12 proposed settlement. *See* Cal. R. Ct. 3.769(c), (e)-(g).

13 The decision to approve or reject a proposed settlement lies within the Court's sound
14 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.
15 Nevertheless, in considering a potential settlement for approval, a court is not to turn the
16 approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
17 conclusions on the contested issues of fact and law which underlie the merits of the dispute."
18 *Officers for Justice*, 688 F.2d at 625.

19 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and
20 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable"
21 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
22 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
23 after determining that it is "fair, adequate and reasonable," considering factors such as the
24 "risk, expense, [and] complexity" of continued litigation) (citations omitted). The Court enjoys
25 broad discretion in making its fairness determination, and should consider factors including, but
26 not limited to:

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1 [T]he strength of Plaintiff's case, the risk, expense, complexity and likely duration
2 of further litigation, the risk of maintaining class action status through trial, the
3 amount offered in settlement, the extent of discovery completed and the stage of
4 the proceedings, the experience and views of counsel . . . and the reaction of the
5 class members to the proposed settlement.

6 *Dunk, supra* (detailing non-exhaustive list of factors for court's consideration at final approval).

7 The above factors are not exclusive "and the court is free to engage in a balancing and
8 weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at
9 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private
10 consensual agreement between the parties." *Id.* The inquiry must be limited "to the extent
11 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
12 overreaching by, or collusion between, the negotiating parties." *Id.* (citation and internal
13 quotation marks omitted).

14 At the preliminary approval stage, the Court need only determine that the settlement falls
15 within the "range of possible judicial approval," so that notice to the class and the scheduling of
16 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
17 preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies .
18 . . and [the settlement] appears to fall within the range of possible approval." *Manual For*
19 *Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A "presumption
20 of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2)
21 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
22 counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*,
23 *supra* (citing *Newberg* § 11:41). As shown below, the Settlement here falls well within the range
24 of approval because there are no grounds to doubt its fairness.

25 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
26 **NEGOTIATIONS**

27 The Settlement was the product of extensive arm's length negotiations between counsel
28 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
professional, the settlement negotiations were adversarial and non-collusive in nature. The

1 Settlement reached is the product of substantial effort by the Parties and their counsel. Although
2 Plaintiff and his counsel believed that there was a possibility of certifying the claims, they
3 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
4 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
5 and/or on an appeal that can take several more years to litigate. In addition, if Defendant
6 prevailed on any of its defenses, the Class may not have received any monetary recovery.

7 **C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT**
8 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

9 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
10 weaknesses of this case before reaching the Settlement. As described above, the Settlement was
11 reached after extensive investigation and research, thorough calculations and risk evaluation, and
12 a substantial exchange of information relating to the Class Members prior to mediation.

13 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

14 To evaluate a settlement, the parties must provide the trial court with “basic information
15 about the nature and magnitude of the claims in question and the basis for concluding that the
16 consideration being paid for the release of those claims represents a reasonable compromise.”
17 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
18 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
19 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that
20 the class could recover was not necessary:

21 Greenwell misunderstands *Kullar*, apparently interpreting it to
22 require the record in all cases to contain evidence in the form of an
23 explicit statement of the maximum amount the plaintiff class could
24 recover if it prevailed on all its claims – a number which appears
25 nowhere in the record of the case. But *Kullar* does not, as Greenwell
26 claims, require any such explicit statement of value; it requires a
27 record which allows “an understanding of the amount that is in
28 controversy and the realistic range of outcomes of the litigation.

26 A settlement is not judged against what might have been recovered had a plaintiff
27 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
28 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250

1 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
2 by the proposed settlement is substantially narrower than it would be if the suits were to be
3 successfully litigated, this is no bar to a class settlement because the public interest may indeed
4 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
5 litigation.”).

6 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
7 significant legal and factual grounds for defending this Action exist. First, in addition to
8 disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff could obtain
9 class certification, arguing a lack of commonality of the legal claims and injuries. Defendant
10 further argued that it complied with the applicable law and that any purported deviations
11 therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the Class.
12 While Plaintiff asserts that this is a suitable case for certification, he realizes that there is always
13 a significant risk associated with class certification proceedings, which could significantly limit
14 the claims that he could pursue on a class basis.

15 In light of the uncertainties of protracted litigation, this negotiated Settlement reflects the
16 best practicable recovery for the Class. While the total settlement amount is, of course, a
17 compromise figure, the potential risks and opportunities of both Parties were effectively weighed
18 and considered by the Parties, resulting in a fair and equitable settlement.

19 Based upon detailed data obtained through informal discovery and information
20 exchanges, Plaintiff’s counsel estimated the following data points through the date of mediation:
21 (1) 109 Class Members, (2) 6,569 Workweeks, (3) 32,845 shifts worked, and (4) approximately
22 4,727 wage statements during the PAGA Period.

23 Plaintiff contends that his strongest claim was for unpaid wages due to Defendant’s
24 piece-rate pay policy. Based on data and information gathered prior to mediation, Plaintiff
25 alleges that there were approximately 17,810 shifts worked through August 17, 2020 (when
26 Decker adopted its written policy), but only 13.5% of shifts had California drivetime. Thus,
27 there were approximately 2,404 relevant shifts and Plaintiff alleged that each driver had about
28 2.5 hours of uncompensated time shift. Based on these metrics, Plaintiff’s counsel estimated a

1 maximum damage exposure on the unpaid wage claims of \$258,468.

2 However, Defendant raised a host of strong defenses both as to class certification and on
3 the merits. For instance, Defendant argued that its piece-rate policy complied with California
4 law pursuant to *Ayala v. U.S Xpress Enterprises, Inc.* (C.D. Cal., June 9, 2020), 2020 WL
5 3071707 because the pay structure was intended to and did cover all tasks, including non-driving
6 time. Because of these strong defenses and substantial risk in continued litigation, Plaintiff
7 assigned a 20% risk at class certification and another 20% risk on the merits, leading to a risk-
8 adjusted value for the wage claims of approximately \$165,420.

9 These unpaid wage claims then gave rise to Plaintiff's claim for waiting time penalties,
10 which had a maximum value of \$693,000 based on 77 *former* Class Members. However,
11 Defendant argued that it would defeat Plaintiff's unpaid wage claims and, because the waiting
12 time penalty claims were derivative of the unpaid wages, Plaintiff's Labor Code § 203 would
13 fail. Defendant further argued that California's timely payment of wages statutes did not apply,
14 because Class Members did not work a majority of their time in California or have a base of
15 work operations in the State. Additionally, Defendant argued that even if the Court determined
16 that some or all unpaid wage claims had merit, waiting time penalties would be inappropriate
17 because any violations were not "willful", and Defendant had a "good faith" belief in the legality
18 of its practices. For these reasons, Plaintiff applied the same class certification and merits risks
19 from above (20% each), leading to a risk-adjusted value for the § 203 claims of \$443,520.

20 Plaintiff's wage statement claim had a maximum value of \$469,200 based on 4,727
21 violations under § 226(e). But this maximum figure ignores several risks and defenses. For
22 example, Defendant raised many defenses, including that: (a) California law did not apply to the
23 drivers since they did not work a majority of their time in California or have a base of work
24 operations in California, (b) the omissions, if any, were not "knowing and intentional" so no
25 liability would attach, and (c) Plaintiff and the Class would be unable to show the requisite
26 "injury" to impose liability. These defenses all went to the merits, not to defeating class
27 certification. Thus, Plaintiff did not assign a risk at the class certification stage but applied a 30%
28 risk on the merits, resulting in risk-adjusted value for the wage statement claim of \$328,440.

As for Plaintiff's claims under Labor Code § 2802 (failure to reimburse), Plaintiff assigned a maximum value of \$164,225 based on \$25 unreimbursed cell phone expenses per workweek (\$25 x 6,569 workweeks). But these claims also faced strong defenses, as Defendant argued that it reimbursed the Class Members for all expenses and that the Class Members were not required to use their cell phones for work purposes. Indeed, Defendant argued that the opposite was true since Decker's trucks all have onboard electronic devices that are fully capable of handling any necessary communications (without a Class Member needing to use their cell phone). Based on these defenses, Plaintiff assigned a 15% risk at class certification and a 30% risk on the merits, leading to a risk-adjusted value of \$97,714.

In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

•	Unpaid Wage Claims	\$	165,420
•	Waiting Time Penalty Claims	\$	443,520
•	Wage Statement Claims	\$	328,440
•	Unreimbursed Expense Claims	<u>\$</u>	<u>97,714</u>
•	Total Risk Adjusted Penalties and Damages	\$	1,035,094

The reasonableness of the Settlement is apparent from the fact that the proposed Settlement is 67.6% of the risk-adjusted class damages and penalties. And while the PAGA civil penalty would have a maximum value in the high six figures, this figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims and particularly that the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying claim. For these reasons, the Parties submit that the agreed-upon Settlement is fair and reasonable.

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1 **E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
2 **LITIGATION**

3 The view of the attorneys actively conducting the litigation is entitled to significant
4 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.
5 Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail,*
6 *Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of
7 counsel”) (internal quotation and citation omitted).

8 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having
9 repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only
10 5% of litigators), having achieved large settlements and verdicts, including one of the largest
11 PAGA awards in California’s history, collecting over \$250 million for its clients, having tried
12 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
13 6). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and risks of this case,
14 and are of the view that this is a fair and reasonable settlement in light of the nature of the
15 claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and
16 uncertainties of class certification and litigation.

17 **F. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

18 The proposed Class Notice should be approved, as it fully informs the Class Members of
19 the nature of the lawsuit and each Class Member’s rights under the terms of the Settlement
20 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as
21 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified
22 of the proposed Settlement.

23 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
24 the Class Notice to the last known address of all Class Members complies with all the
25 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
26 Class Notice includes (1) the material terms of the Settlement; (2) the proposed attorneys’ fees,
27 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
28 and how Class Members may elect to exclude themselves or make an objection with respect to

1 settlement of Released Class Claims; and (4) how Class Members can obtain additional
2 information. *See* Class Notice (Exhibit B to Mankin Decl.). In addition, it will inform Class
3 Members of their estimated settlement share.

4 The Court has wide discretion in approving the means of providing notice, so long as the
5 class representative “provide(s) meaningful notice in a form that should have a reasonable
6 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,
7 (1976) 15 Cal.3d 853, 861. Here, the Parties’ notice plan is that notice of the Settlement will be
8 disseminated directly to the Class Members by first class mail by the Settlement Administrator,
9 since Defendant has the last known addresses of all Class Members and the Settlement
10 Administrator will perform a skip trace and update those addresses for any class notices that are
11 returned and re-send the notice.

12 The Class Notice satisfies the requirements of California Rule of Court 3.766 and affords
13 Settlement Class Members with all due process protections required by the United States
14 Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct.
15 3.766(d), because the Notice includes, without limitation (1) a detailed explanation of the case,
16 including the basic contentions or denials of the Parties; (2) a statement that the Court will
17 exclude the Class Member from the Settlement Class with regards to Released Class Claims if
18 the Class Member so requests by a specified date; (3) a procedure for the Class Member to
19 follow in requesting exclusion from the settlement of Released Class Claims; (4) a statement that
20 the judgment, whether favorable or not, will bind all Class Members who do not request
21 exclusion; and (5) a statement that any Class Member who does not request exclusion from the
22 settlement of Released Class Claims may, if the Class Member so desires, enter an appearance
23 through counsel. The 30-day deadline for Class Members to exclude themselves is reasonable,
24 as it provides Class Members with sufficient time to do so and, if they so choose, to seek
25 independent legal advice in the interim. If a Class Member does not opt-out from the settlement
26 with respect to Released Class Claims, then he or she will automatically be sent an Individual
27 Settlement Payment check.

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1 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
2 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

3 The fact that each Class Member who does not opt out of the Settlement of Released
4 Class Claims shall be mailed an Individual Settlement Payment check ensures that every Class
5 Member will be paid unless he or she affirmatively acts to exclude himself or herself. Moreover,
6 the Settlement Amount is non-reversionary, which means that no settlement funds will revert to
7 Defendant; instead, if any checks are not cashed before the objection deadline, the funds will be
8 transferred to the State Controller’s Office subject to approval of the Court. Such terms are
9 favored by courts and demonstrate that there was no collusion between counsel for the Parties
10 and that the Settlement is fair and favorable to the Class Members.

11 **H. THE ATTORNEYS’ FEES AND COSTS ALLOCATION UNDER THE SETTLEMENT**
12 **AGREEMENT IS FAIR**

13 Under the terms of the Settlement Agreement, Class Counsel is requesting \$233,333.33
14 in attorneys’ fees, which is equal to one-third of the Settlement Amount. *See, e.g., Laffitte v.*
15 *Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at
16 a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the
17 benefit of the class members, the trial court may determine the amount of a reasonable fee by
18 choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp.*
19 (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3
20 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of
21 1/3 of the total settlement was “well within the range of percentages which courts have upheld
22 as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal.
23 June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee award of
24 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14,
25 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund
26 in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third
27 of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008)
28 No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

1 Additionally, Plaintiff is seeking up to \$20,000 in litigation costs, pursuant to the
2 Settlement Agreement.

3 Once the Court grants preliminary approval of the Settlement Agreement and Class
4 Notice is disseminated, Plaintiff's counsel will submit a comprehensive request for attorneys'
5 fees and costs with its final approval motion.

6 **I. THE CLASS REPRESENTATIVE'S SERVICE AWARD REQUEST IS FAIR AND**
7 **APPROPRIATE**

8 The Settlement Agreement provides a service award payment of \$10,000 to the Class
9 Representative, which is reasonable given large recovery that Class Members will receive on
10 average, as well as the time and effort he devoted to this case. His efforts included providing
11 factual background for the Class and PAGA Complaint; providing documents and information
12 about Defendant's compensation plan; participating in phone calls to discuss litigation and
13 settlement strategy; making himself available throughout the litigation to assist with analyzing
14 the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
15 Settlement documents. The Class Representative also assumed significant risk in bringing this
16 litigation—namely, had he lost, he could have been ordered to pay Defendant's costs.

17 The requested service award falls within the range of incentive payments typically
18 awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson*
19 *Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879
20 (approving \$11,250 service award to each of the two class representatives in a trucker meal break
21 class action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951
22 SI, 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in
23 California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D.
24 Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from
25 a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal.
26 Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 ("the
27 court finds Plaintiff's enhancement payments of \$ 15,000 each to be reasonable."); *Glass v. UBS*
28 *Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52

(finding “requested payment of \$ 25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award for each Class Representative” in wage and hour settlement).

VI. THE COURT SHOULD APPOINT ILYM AS SETTLEMENT ADMINISTRATOR

Subject to the Court’s approval, the Parties stipulated to ILYM Group serving as the Settlement Administrator. ILYM is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$5,500. (Mankin Decl. ¶ 29).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court’s approval, the Parties propose that the Court schedule a hearing for final approval approximately 105 days after the Preliminary Approval Date, as follows:

March 27, 2023	Preliminary Approval (PA) hearing
April 20, 2023 (24 calendar days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
May 20, 2023 (30 calendar days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the Settlement of Released Class Claims.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys’ fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff’s Motion for Final Approval of Settlement, or filing any response to an objection to the Settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately July 10, 2023 - 105 days after Preliminary Approval is granted)	Final Approval Hearing.

1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant the
3 motion for preliminary approval of the Settlement.

4 Dated: November 23, 2022

LAUBY, MANKIN & LAUBY LLP

5
6 BY: 
7 Brian J. Mankin, Esq.
8 Attorneys for Plaintiff and the Proposed
9 Class
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On November 23, 2022, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California.

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 23, 2022, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

SERVICE LIST

Katherine C. Den Bleyker, Esq.
William B. Richards, Jr., Esq.
LEWIS, BRISBOIS, BISGAARD & SMITH LLP
633 West 5th Street, #400
Los Angeles, CA 90071
213-250-7900
katherine.denbleyker@lewisbrisbois.com
william.richards@lewisbrisbois.com
Attorneys for Defendant DECKER TRUCK LINE, INC.