

1 Taras Kick (State Bar No. 143379)
Taras@kicklawfirm.com
2 Greg Taylor (State Bar No. 315128)
Greg@kicklawfirm.com
3 **THE KICK LAW FIRM, APC**
4 815 Moraga Drive
Los Angeles, CA 90049
5 Tel: (310) 395-2988
Fax: (310) 395-2088
6

7 Attorneys for Plaintiff KENNETH KERNITZKI,
individually and on behalf of all others similarly
8 situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF RIVERSIDE**
11

12 KENNETH KERNITZKI, individually, and on
behalf of all others similarly situated,

13 Plaintiff,

14 v.
15

16 QUALITY CAR SHIPPERS, LLC, a California
limited liability company; and DOES 1 through
17 50, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28
29
30

Case No. CVRI2100564

[Assigned to Harold W. Hopp, Dept. 1]

Complex Class Action

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR FINAL APPROVAL OF CLASS
AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Date: August 23, 2023

Time: 8:30 AM

Dept: 1

Reservation No.: 799134302059

*[Filed concurrently with the Declaration of Taras
Kick; Declaration of Greg Taylor; Declaration of
Kenneth Kernitzki; Declaration of Stephen Gomez;
and Declaration of Robert Weissman; Proposed
Order and Final Judgment Thereon.]*

Complaint filed: February 5, 2021

Trial date: None set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 23, 2023, at 8:30 a.m. in Department 1 of the Riverside County Historic Courthouse located at 4050 Main Street, Riverside, CA 92501, proposed class representative Kenneth Kernitzki ("Plaintiff") will and hereby does move the Court for an order that:

1. Finally approves of the proposed class action settlement described herein and as set forth in the parties' Class Action and PAGA Settlement Agreement and Codicil to the Settlement (collectively, the "Settlement," "Settlement Agreement," or "SA"), on the grounds that the Settlement is fair, reasonable and adequate for all Class Members;

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

3. Finds that the Court-approved Class Notice distributed to the Settlement Class pursuant to the Court's May 3, 2023, Order granting preliminary approval constituted the best notice practicable under the circumstances;

4. Orders Defendant Quality Car Shippers, LLC. to remit payment of \$517,050.00 to the Settlement Administrator;

5. Orders the Settlement Administrator to distribute \$22,500.00 to the California Labor and Workforce Development Agency ("LWDA") for penalties pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and to distribute \$7,500.00 in PAGA penalties to Aggrieved Employees;

6. Approves Class Counsel's Attorneys' Fees Award in the amount of \$172,350 or one-third (33-1/3%) of the total recovery and \$3,418.09 for reimbursement of costs incurred by Class Counsel in connection with the prosecution of this action, and to distribute \$10,900.00 in Settlement Administration Expenses to itself, Simpluris, Inc., and;

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

Plaintiff further requests that this Court enter a Final Judgment, which includes a provision for this Court's retention of jurisdiction over the parties to enforce the terms of the judgment.

This Motion is made pursuant to Rules of Court, Rules 3.764, 3.766, and 3.769, and Code of Civil Procedure section 382, and is based on this Notice, the attached Memorandum of Points and Authorities, the accompanying Declaration of Greg Taylor ("Taylor Decl.") and exhibits thereto, the Declaration of

1 Stephen Gomez Regarding Notice and Settlement Administration (“Simpluris Decl.”), the complete files
2 and records of this case, and any other evidence or oral argument which may be considered by the court at
3 the time of the hearing.
4

5 Dated: July 27, 2023

THE KICK LAW FIRM, APC

7 By: /s/ Greg Taylor
8 Taras Kick
9 Greg Taylor
Attorneys for Plaintiff Kernitzki and the Class
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	3
A.	Factual Background	3
B.	Procedural History	3
C.	Investigation and Discovery, Settlement Negotiations, and Preliminary Approval	4
III.	SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT	5
A.	Settlement Amount and Funding after Final Judgment	5
B.	No-Claim Form Settlement Binding on Parties	5
C.	Release	5
D.	Net Settlement Amount and Settlement Payments to Participating Class Members.....	6
E.	PAGA Payment to the LWDA and Aggrieved Employees	6
F.	Settlement Checks Void at 180 Days and <i>Cy Pres</i> Transfer	7
IV.	THE SETTLEMENT ADMINISTRATION PROCESS	8
V.	THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT.....	8
A.	The Settlement Resulted from Arm's-Length Bargaining Based Upon Extensive Investigation and Discovery	9
B.	The Risks Inherent in Continued Litigation and Individual Settlement Favor Final Approval of the Settlement	10
C.	The Proposed Settlement is Fair and Reasonable	12
VI.	PLAINTIFF'S REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE.....	15
A.	Plaintiff Requests a One-Third Percentage-Based Fee Award	15
B.	Analysis Pursuant to the Lodestar Methodology.....	16
VII.	PLAINTIFF SERVED ADMIRABLY AS CLASS REPRESENTATIVE AND THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE	18
VIII.	REASONABLE SETTLEMENT ADMINISTRATION COSTS TO BE APPROVED.....	19
IX.	THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED	19
X.	CONCLUSION.....	20

TABLE OF AUTHORITIES

CASES

7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135 -----	15
American Bank, N.A. v. Gorman (2006) 147 Cal.App.4th 1 -----	21
Arenas v. El Torito Rests., Inc., 183 Cal. App. 4th 723 (2010)-----	26
Arias v. Superior Court, 46 Cal.4th 969 -----	21
Ayala v. US Xpress, 851 Fed.Appx. 53 (9th Cir. 2021) -----	16
Banas v. Volcano Corp. (N.D. Cal. 2014) 47 F.Supp.3d 957-----	23
Bartold v. Glendale Federal Bank (2000) 81 Cal.App.4th 816 -----	26
Beasley v. Wells Fargo Bank (1991) 235 Cal.App.3d 1407 -----	23
Behrens v. Wometco Enters., Inc. (S.D. Fla. 1988) 118 F.R.D. 534 -----	19
Behrens v. Wometco Enters., Inc. (S.D. Fla. 1988) 118 F.R.D. 534, <i>aff'd</i> , (11th Cir. 1990) 899 F.2d 21-19	
Bickley v. CenturyLink, Inc. (C.D. Cal. Nov. 29, 2016) No. CV 15-1014-JGB (ASX), 2016 WL 9046911 -----	23
Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43 -----	15, 20, 22, 24
City of Detroit v. Grinnell Corp. (S.D.N.Y. 1972) 356 F. Supp. 1380 -----	20
City of Detroit v. Grinnell Corp. (S.D.N.Y. 1972) 356 F. Supp. 1380, <i>aff'd in part, rev'd on other</i> <i>grounds</i> , (2d Cir. 1974) 495 F.2d 448 -----	20
Concepcion v. Amscan Holdings (2014) 223 Cal.App.4th 1309 -----	23
Consumer Cause v. Mrs. Gooch's Natural Food Markets (2005) 127 Cal.App.4th 387-----	21
Craft v. County of San Bernardino (C.D. Cal. 2008) 624 F.Supp.2d 1113 -----	24
Diaz v. Grill Concepts Services, Inc. (2018) 23 Cal. App. 5th 859 -----	18
Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794 -----	14
Fleming v. Covidien, Inc., No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011 -----	20
Glendora Community Redevelopment Agency v. Demeter (1984) 155 Cal.App.3d 465 -----	24
In re Activision Securities Litigation (N.D. Cal. 1989) 723 F.Supp. 1373-----	22
In re American Bank Note Holographics, Inc., Securities Litigation (S.D.N.Y. 2001) 127 F.Supp.2d 418 -----	21
In re Cellphone Fee Termination Cases (2010) 186 Cal.App.4th 1380-----	18
In re High Tech Empl. Antitrust Litig., (N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 118052-----	23
In re High-Tech Employee Antitrust Litig. (N.D. Cal. Sept. 2, 2015) 2015 WL 5158730-----	23
In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706 -----	15
In re Toyota Motor (C.D. Cal. 2013) 2013 U.S. Dist.Lexis 123298-----	23
In re Toys R US FACTA Litig. (C.D. Cal. 2014) 295 F.R.D. 438 -----	20
Int'l Bhd. Of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin., 986 F.3d 841 (9th Cir. 2021)16	
Ketchum v. Moses (2001) 24 Cal.4th 1122-----	24
Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116-----	18
Laffitte v. Robert Half Intern, Inc. (2016) 1 Cal.5th 480 -----	21, 22
Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19 -----	22, 24
Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429 -----	17
Martel v. Valderamma (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 -----	19
MBNA American Bank, N.A. v. Gorman (2006) 147 Cal.App.4th 1 -----	23
McKnight, et al., v. Uber Technologies, Inc., et al. 3:14-CV-05615-JST, Docket No. 148 (December 8, 2017) -----	23
Munoz v. BCI Coca-Cola Bottling Company of Los Angeles (2010) 186 Cal.App.4th 399 -----	24
Nordstrom Com. Cases (2010) 186 Cal.App.4th 576-----	14
Oman v. DeltaAir Lines, Inc. (2020) 9 Cal.5th 762 -----	16

1	<i>Parkinson v. Hyundai Motor America</i> (C.D. Cal. 2010) 796 F.Supp.2d 1160 -----	23
2	<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4th 1084 -----	23
3	<i>Raining Data v. Barrenchea</i> (2009) 175 Cal.App.4th 1363 -----	23
4	<i>Richmond v. Dart Industries</i> , 29 Cal.App.3d 462 (1981) -----	26
5	<i>San Bernardino Valley Audubon Soc. v. County of San Bernardino</i> (1985) 155 Cal.App.3d 738 -----	24
6	<i>Serrano v Priest</i> (1977), 20 Cal.3d 25 -----	23
7	<i>Van Vranken v. Atlantic Richfield Co.</i> , (N.D. Cal. 1995) 901 F.Supp. 294-----	24
8	<i>Vasquez v. Superior Court</i> , 4 Cal.App.3d 800 (1971) -----	26
9	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043 -----	24
10	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F. Supp. 294 -----	25, 26
11	<i>Washington Mut. Bank v. Superior Court</i> , 24 Cal. 4th 906 (2001)) -----	26
12	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224 -----	14, 15, 18, 21, 23
13	<i>Williams v. Superior Court</i> , 3 Cal.5th 531, (2017)-----	21

STATUTES

14	49 U.S.C. § 14501 -----	16
15	Bus. & Prof. Code § 17200, <i>et seq</i> -----	9
16	California Code of Civil Procedure section 382-----	2, 26
17	Labor Code § 2699.3 -----	9
18	Rules 3.764, 3.766, and 3.769-----	2

TREATISES

19	<i>Newberg on Class Actions</i> (4th Ed., 2002) § 11.47 -----	21
20	<i>Newberg</i> § 23:23 (6th ed.)-----	26
21	<i>Newberg and Rubenstein on Class Actions</i> (“Newberg”) (6th ed.) § 13.59-----	22
22	<i>Newberg</i> , § 3:13 -----	26

REGULATIONS

23	83 Fed. Reg. 67470-----	16
----	-------------------------	----

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY**

3 Before the Court is Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement.
4 This memorandum and the accompanying declarations are intended to demonstrate that the requirements
5 for preliminary approval set forth in the Department 1 Case Management Order ("CMO") are satisfied and
6 that the Settlement is ready for final approval.

7 The underlying putative class action is a trucker wage-and-hour lawsuit, which Plaintiff Kenneth
8 Kernitzki brought on behalf of himself and a class of 126 similarly situated non-exempt commercial truck
9 drivers who performed work for Defendant Quality Car Shippers, LLC ("Defendant") in California. The
10 Settlement is the product of rigorous and good faith negotiations between the parties, conducted at arm's
11 length and without collusion. The fully executed Class Action and PAGA Settlement Agreement and the
12 Codicil to the Settlement (collectively, "Settlement Agreement," "Settlement," or "SA"), are attached as
13 Exhibits 1 and 2 to the concurrently filed Declaration of Greg Taylor ("Taylor Decl.").

14 Plaintiff's unopposed motion for preliminary approval came on hearing on May 2, 2023. At that
15 time, this Court requested certain revisions to the Class Notice and Proposed Order Re Motion for
16 Preliminary Approval. (Taylor Decl., ¶ 11.) Specifically, the Court requested that Plaintiff revise the final
17 approval hearing date on the Proposed Order and indicate what services the administrator will perform. (*Id.*)
18 The Court also requested that Plaintiff revise the Class Notice to include an explanation of PAGA in
19 laymen's terms, to clarify the released parties, and to clarify that at this stage the Court has determined only
20 that there is sufficient evidence to suggest that the settlement might be fair, adequate and reasonable. (*Id.*)
21 Thereafter, the requested changes were made to the Proposed Order and Class Notice. (*Id.*) Plaintiff filed
22 the revised Proposed Order on May 3, 2023, along with the revised Class Notice attached as Exhibit A to
23 the Proposed Order. (*Id.*)

24 This Court then granted preliminary approval in an Order dated May 3, 2023, finding the terms of
25 the Settlement to be "within the range of fairness, adequacy, and reasonableness of a settlement that
26 ultimately could be granted final approval." (*See* Order Granting Preliminary Approval of Class and PAGA
27 Representative Action Settlement ["Preliminary Approval Order"], ¶ 1.)

28 The Court also found that, for purposes of settlement, "the proposed Class is ascertainable and
29 presents a sufficiently well-defined community of interest in questions of law and fact." (*Id.*) Accordingly,
30 the Court conditionally certified the following Class: "All current and former drivers, classified by

1 Defendant as independent contractors, who hauled for Defendant at any time during the Class Period, from
2 February 5, 2017, through the date Plaintiff filed the motion for preliminary approval [...].” (*Id.*)

3 In its Order, the Court appointed Simpluris, Inc. (“Simpluris”) as the Settlement Administrator
4 under the terms of the Settlement Agreement (*Id.*, ¶ 4); approved the proposed Class Notice, Objection
5 Form, and Exclusion Form as to form and content (*Id.*, ¶ 8); found that the methods of giving notice
6 prescribed in the Settlement Agreement meet the requirements of due process, are the best notice
7 practicable under the circumstances, and constitute valid, due and sufficient notice to all members of the
8 Class (*Id.*, ¶ 9); and directed the Parties to carry out the proposed Settlement and Administrative Duties as
9 set forth in the Settlement and the Preliminary Approval Order. (*Id.*, ¶ 11.)

10 On June 30, 2023, the parties agreed to proportionally increase the Gross Settlement Amount
11 (“GSA”) after an additional 19 Class Members were discovered who needed to be added to the Class List.
12 On July 3, 2023, the Court accepted and signed the parties’ Joint Stipulation and Proposed Order setting
13 forth a schedule for mailing notice to these 19 Class Members, including a mailing date of July 7, 2023.
14 (*See* Joint Stipulation and Proposed Order, signed July 3, 2023 [“July 3 Stip. and Order”].)

15 Plaintiff can now report that the notice program ordered by this Court has been very successful, and
16 Plaintiff therefore presents the matter for final approval. Specifically, as evidenced by the concurrently
17 filed Declaration of Stephen Gomez of the court-appointed claims administrator Simpluris, both mailings
18 were completed with an overall successful deliverable rate of 99.2%. (Declaration of Stephen Gomez
19 Regarding Notice and Settlement Administration, dated July 27, 2023 [“Simpluris Decl.”], ¶¶ 8-11.)

20 Further, not a single class member has objected to any aspect of the proposed settlement, and not a
21 single Class Member has elected to opt out of the proposed Settlement being presented to this Court for
22 final approval. (*Id.*, ¶¶ 12-15.) Therefore, if these numbers do not change, if this Court approves the
23 proposed Settlement in full, Settlement Class Members will be paid their portion of the Net Settlement
24 Amount averaging approximately \$2,335.57 per Class Member, including a highest estimated payment of
25 \$8,752.82. (*Id.*, ¶¶ 16-18.) This is in addition to 82 Aggrieved Employees receiving their proportionate
26 share of \$7,500.00 in PAGA penalties, with an estimated average Individual PAGA Payments of \$91.46
27 and the highest estimated award of \$392.02. (*Id.*, ¶ 19.)

28 Moreover, the addition of 19 new Class Members did not decrease the average recovery among
29 Class Members. In fact, average recovery per Class Member increased as a result of the parties’ agreement
30 to increase the Gross Settlement Amount (“GSA”) from \$450,000 to \$517,050.00. (Taylor Decl., ¶ 12.)

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

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

9 **A. Factual Background**

10 This is a trucker wage-and-hour lawsuit. From approximately August 2018 to December 2019,
11 Plaintiff Kenneth Kernitzki ("Plaintiff") worked as a commercial truck driver in California for Defendant
12 Quality Car Shippers, LLC ("Defendant" or "QCS"). (Declaration of Kenneth Kernitzki ["Kernitzki Decl."],
13 ¶ 4.) Defendant is a California-based commercial transportation company. (*Id.*)

14 Plaintiff brings nine (9) causes of action on behalf of himself and a class of 126 similarly situated
15 commercial truck drivers in California. Plaintiff alleges that he and his fellow Class Members and Aggrieved
16 Employees were deprived of certain rights afforded to them by the Labor Code during their employment
17 with Defendant. Defendant denies these allegations.

18 **B. Procedural History**

19 On September 11, 2020, pursuant to Labor Code § 2699.3, Plaintiff submitted notice to the Labor
20 and Workforce Development Agency ("LWDA") and to Defendant, LWDA case number LWDA-CM-
21 805937-20, of his intention to litigate various alleged Labor Code violations. (Taylor Decl., ¶ 4, Ex. 3.)

22 On February 5, 2021, Plaintiff filed the initial complaint on behalf of himself and others similarly
23 situated to recover damages and penalties for the Labor Code violations alleged against Defendant ("the
24 Action"). (*Id.*, ¶ 4.) The Complaint alleges the following causes of action: (1) failure to provide meal
25 periods; (2) failure to provide rest periods; (3) failure to pay minimum wage; (4) failure to timely to pay all
26 wages due at separation; (5) failure to provide accurate itemized wage statements; (6) failure to indemnify
27 employees for necessary business expenses; and (7) unlawful deductions; (*See Complaint.*) Plaintiff alleged
28 further that these violations (8) constituted unfair and unlawful business practices under the Unfair
29 Competition Law, Bus. & Prof. Code § 17200, *et seq.*, and that (9) Defendant was liable for penalties under
30 the Private Attorneys General Act ("PAGA"), Lab. Code § 2698, *et seq.* (*Id.*)

C. Investigation and Discovery, Settlement Negotiations, and Preliminary Approval

Both before and after initiating the Action on behalf of the putative class, Plaintiff and Class Counsel diligently investigated the claims alleged and conducted legal research regarding Defendant's potential liability and defenses. (Taylor Decl., ¶ 6.) The parties engaged in both formal and informal discovery, and Class Counsel reviewed and assessed Defendant's production of data and documents relating to Plaintiff's claims. (*Id.*)

Defendant propounded and Plaintiff responded to requests for admissions, special interrogatories, form interrogatories, and requests for production of documents. In addition, Plaintiff obtained through informal discovery hundreds of documents, including contractor agreements, trip invoices, bills of lading, settlement reports and pay statements. (*Id.*, ¶ 7.) Defendant also produced data detailing the miles driven in California for a sample of 25% of the putative class and demonstrating the size of the putative Class. (*Id.*) Class Counsel carefully considered the class claims at issue and its analysis of Defendant's driver trip data. (*Id.*) Factual investigation also involved analysis of employment-related documents provided by Plaintiff and numerous discussions between Plaintiff and Class Counsel. (*Id.*)

Defendant also produced records documenting its financial difficulties in recent years, including income tax returns for 2019 and 2020, showing sizeable losses in these years, and Class Counsel considered the impact of Defendant's financial condition. (*Id.*, ¶ 8.) Defendant also produced an arbitration agreement and class action waiver signed by Plaintiff, which Plaintiff contends is unenforceable but recognizes the risk the Court could disagree. (*Id.*)

Based on continued good faith meet and confer efforts, the parties discussed resolution through extensive arm's-length settlement negotiations. (*Id.*, ¶ 9.) Settlement negotiations were conducted in good faith between qualified and experienced Class Counsel at The Kick Law Firm, APC and defense counsel at Larson & Gaston, LLP. At all times, negotiations were vigorous, truly arm's-length and involved a contentious—albeit collegial—debate. (*Id.*) Based on the parties' substantial investigation and discovery, Class Counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

Upon reaching a settlement in principle, the parties negotiated the terms of a long form settlement agreement, which the parties based on a template issued by the Complex Civil Department of the Los Angeles County Superior Court with modifications similar to other recent wage and hour settlements. (*Id.*, Ex. 1.) The parties later executed a Codicil to the Settlement (the "Codicil"), which amended certain terms to ensure compliance with this Court's CMO. (*See* Ex. 2.)

On March 30, 2023, Plaintiff filed his Unopposed Motion for Preliminary Approval of Class and PAGA Representative Action Settlement and supporting documents. (*Id.*, ¶ 10.) On May 3, 2023, Plaintiff filed a revised Proposed Order and Class Notice, incorporating the changes requested by the Court at the preliminary approval hearing. (*Id.*, ¶ 11.) Thereafter, on May 3, 2023, the Court entered the Preliminary Approval Order, granting preliminary approval of the Settlement Agreement, approving the form and content of the Class Notice, and approving the proposed administration procedures and associated deadlines. (Preliminary Approval Order, ¶¶ 1, 8-11, 14.)

D. Increase in the Gross Settlement Amount and Addition of 19 Class Members

On June 30, 2023, the parties agreed to increase the GSA from \$450,000.00 to \$517,050.00 to account for the addition of 19 Class Members who were discovered to be inadvertently omitted from the Class List, thus ensuring that average recovery per Class Member would not decrease. (Taylor Decl., ¶ 12.) On July 3, 2023, the Court accepted and signed the parties' Joint Stipulation and Proposed Order containing a proposed schedule for mailing notice to the 19 new Class Members. (*Id.*) Class Counsel successfully coordinated with Simpluris to confirm this second batch of notice mailing was promptly completed. (*Id.*)

Plaintiff now moves for final approval of the Settlement Agreement.

III. SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT

A. Settlement Amount and Funding after Final Judgment

Defendant has agreed to pay a GSA of \$517,050.00 to fund all payments pursuant to the Settlement, including: Individual Settlement Payments for wages, penalties, and interest; a proposed Class Representative Service Award, subject to Court approval; Attorneys' Fees and Costs to Class Counsel, as approved by this Court; Settlement Administration Expenses; and an allocation for penalties under PAGA (the "PAGA Penalties"). (SA, ¶ 1.23; July 3 Stip. and Order.) Furthermore, Class Members are not required to submit a claim form, and there is no reversion of any residual funds to Defendants. (SA, ¶ 3.1.) Defendants will deposit the GSA with the Settlement Administrator within 20 days of the Effective Date. (SA, ¶ 4.3.) Defendants will separately pay the employer's payroll tax obligations on the wage portion of Individual Settlement Payments in addition to the GSA. (*Id.*)

B. No-Claim Form Settlement Binding on Parties

Class Members and Aggrieved Employees will not be required to submit claim forms to receive Individual Class Settlement Payments or Individual PAGA Payments. (SA, ¶ 3.1.)

C. Release

1 Upon the Effective Date, Plaintiff and Participating Class Members shall be deemed to have settled
2 and released the Released Parties of all Released Claims (SA, ¶ 5; Codicil, ¶¶ 2-3.) Plaintiff shall further
3 be deemed to have released the Released Parties of a General Release, including by waiver of Civil Code
4 section 1542. (SA, ¶¶ 5.2-5.3.) The Release agreed to by the Parties does not contain any terms outside the
5 scope of the Action and are limited to those claims arising during the Class Period. (SA, ¶¶ 1.40, 5.1-5.3;
6 Codicil, ¶ 3.) The PAGA release covers both Participating and Non-Participating Class Members who are
7 Aggrieved Employees and releases all claims for penalties pursuant to PAGA based on the Released Class
8 Claims as alleged in the PAGA Notice. (SA, ¶ 1.41; Codicil, ¶ 4.) Released PAGA Claims are limited to
9 claims arising during the PAGA Period. (*Id.*) As specified in the Codicil, Plaintiff does not release any
10 aggrieved employee's claim for wages or damages. (*Id.*)

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

12 The Net Settlement Amount ("NSA") shall be calculated by deducting from the GSA the following:
13 (i) Individual PAGA Payments, (ii) the LWDA PAGA Payment, (iii) Class Counsel's attorneys' fees and
14 costs, (iv) the Class Representative Service Award, and (v) the Settlement Administration Expenses. (SA,
15 ¶ 1.29.) Under the Settlement, each Participating Class Member will be entitled to payment of a pro rata
16 portion of the Net Settlement Amount. (SA, ¶¶ 1.24-1.25.)

17 The amount to be paid to each Class Member who does not opt out ("Participating Class Member")
18 will be calculated by dividing the NSA by the total number of Workweeks worked by all Participating
19 Class Members in California during the Class Period and then multiplying the result by each Participating
20 Class Member's Workweeks. (SA, ¶ 3.2.4.) As stated in the concurrently filed Declaration of Stephen
21 Gomez, the Settlement Administrator has calculated the average estimated Individual Settlement Payment
22 to be \$2,335.57, and the highest estimated Individual Settlement Payment to be \$8,752.82, after taking into
23 account all proposed disbursements. (Simpluris Decl., ¶ 18.)

24 Each Individual Settlement Payment will be reported as 20% wages and 80% interest, penalties,
25 and other non-wage damages. (SA, ¶ 3.2.4.1.)

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

27 The PAGA Award is \$30,000, with \$22,500, or 75%, to be made payable to the Labor and
28 Workforce Development Agency ("LWDA"), and the remaining \$7,500, or 25%, to be distributed to
29 Aggrieved Employees based on the number of weeks that each Aggrieved Employee worked between
30 September 11, 2019, and March 30, 2023 ("the PAGA Period"). (SA, ¶¶ 1.24-1.25, 1.35.)

Individual PAGA Payments will be based on the number of pay periods worked during the PAGA Period by each Aggrieved Employee. (SA, ¶ 3.2.5.1.) All Aggrieved Employees will be sent Individual PAGA Payments, including those who do not participate in the Class Settlement. (SA, ¶ 4.4.1.) Individual PAGA Payments will be reported on IRS 1099 Forms. (SA, ¶ 3.2.5.2.)

F. Settlement Checks Void at 180 Days and *Cy Pres* Transfer

No money will revert to Defendants under any circumstances. (SA, ¶ 3.1.) If any Individual Settlement Payment check remains uncashed after one hundred eighty (180) days from the date the check is issued, such check(s) will be cancelled. (SA, ¶ 4.4.1.) Thereafter, subject to this Court's approval, any residue from uncashed or undeliverable Individual Class Payment checks or Individual PAGA Payment checks will first be redistributed back to those Class Members who have cashed their checks. (Codicil, ¶ 5.) If, after this second distribution, any Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, such remaining unclaimed funds shall be distributed 50% to Plaintiff's proposed *cy pres* recipient, Public Citizen Foundation, and 50% to Defendant's proposed *cy pres* recipient, St. Christopher Truckers Development & Relief Fund Inc. (*Id.*) Pursuant to this department's CMO, the parties both filed declarations from their respective *cy pres* recipients along with the preliminary approval papers.¹ (*Id.*)

At the preliminary approval hearing on May 2, 2023, the Court noted that the declaration provided by Robert Weissman of Public Citizen Foundation ("Weissman Decl.") included a general "penalty of perjury" statement that did not specify it was under the laws of the State of California. The Court therefore asked Plaintiff to submit, along with the final approval papers, a revised version of Mr. Weissman's declaration, which includes this California-specific language. As requested, the concurrently filed updated declaration of Mr. Weissman, dated June 26, 2023, now clearly states: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." (See Weissman Decl., p. 4.)

Neither Class Counsel nor Plaintiff has any involvement in the governance of the proposed *cy pres* recipients, as indicated in the declarations filed by Plaintiff and Class Counsel prior to preliminary approval. (Kernitzki Decl., ¶ 10; Taylor Decl., ¶ 23.) Defendant and Defense counsel similarly attested to no conflict in the Declaration of Defendant Quality Car Shippers, LLC in Support of Preliminary Approval and the Declaration of Defense Counsel Victor J. Consentino in Support of Preliminary Approval.

¹Defendant filed the Declaration of Shannon Currier of St. Christopher Truckers Development and Relief Fund (Defendant's Proposed *Cy Pres* Recipient) on May 4, 2023, shortly after the preliminary approval hearing.

1 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

2 On May 17, 2023, Defense Counsel provided Simpluris with a mailing list (“Class List”) containing
3 Class Members’ names, most recent mailing address, Social Security numbers and dates of employment
4 for 107 Class Members. (*Id.*, ¶ 6.) The mailing addresses contained in the Class List were processed and
5 updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal
6 Service. (*Id.*, ¶ 7.) On May 25, 2023, Simpluris received the Court-approved Notice of Class Action
7 Settlement (“Class Notice”), Objection Form, and Request for Exclusion Form. (Simpluris Decl., ¶ 5.)

8 On May 31, 2023, Class Notice, along with the enclosed Objection Form and Request for Exclusion
9 Form, was mailed to these 107 Class Members with addresses contained in the Class List via First Class
10 mail or updated via the NCOA search. (*Id.*, ¶ 8.)

11 On July 3, 2023, after the parties informed the Court that an additional 19 Class Members were
12 identified who needed to be added to the Class List, the Court signed an Order setting forth another schedule
13 for mailing notice to these 19 Class Members. (July 3 Stip. and Order.) Thereafter, Class Notice and the
14 enclosed forms were promptly mailed to the additional 19 Class Members. (*Id.*, ¶¶ 9-10.)

15 In total, 13 Class Notices were returned as undeliverable. (*Id.*, ¶ 11.) Of these, zero (0) were returned
16 with forwarding addresses. (*Id.*) Simpluris performed an advanced address search (i.e., skip trace) on all of
17 these addresses and was able to locate 12 updated addresses. (*Id.*) Simpluris promptly mailed a Class Notice
18 to those updated addresses. (*Id.*) Ultimately, just one (1) Class Notice remains undeliverable, resulting in
19 a highly successful delivery rate of 99.2%. (*Id.*)

20 The deadline for Class Members to opt out, submit written objections, or dispute workweeks
21 and/or pay periods was July 15, 2023, for the first mailing and August 11, 2023, for the second mailing.
22 (*Id.*, ¶ 12.) To date, Simpluris has received no opt-out requests, no workweek disputes, and no objections
23 to the Settlement. (*Id.*, ¶¶ 12-15.)

24 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

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

27 ² “It should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense, complexity and likely
28 duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
29 the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence
30 of a governmental participant, and the reaction of the class members to the proposed settlement ... Due regard should
be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the
extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or

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

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

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

18 The investigation and discovery conducted in this matter have been adequate to give Plaintiff and
19 Class Counsel a sound understanding of the merits of their position, Defendant’s defenses, and to evaluate
20 the reasonable value range of the claims of the Class. (Taylor Decl., ¶¶ 6-9.)

21 Prior to reaching a Settlement, the parties engaged in both formal and informal discovery, and Class
22 Counsel reviewed and assessed Defendant’s production of data and documents relating to Plaintiff’s claims.
23 (*Id.*) Plaintiff obtained through informal discovery hundreds of documents, including contractor agreements,
24 trip invoices, bills of lading, settlement reports and pay statements. (*Id.*) Defendant also produced data
25 detailing the miles driven in California for a sample of 25% of the putative class and demonstrating the size
26 of the putative Class. (*Id.*) Class Counsel carefully considered the class claims at issue and its analysis of
27 Defendant’s driver trip data. (*Id.*) Class Counsel considered the impact of Defendant’s financial condition,
28 evidenced by Defendant’s financial records showing sizeable losses in recent years. (*Id.*) Due to the parties’
29 substantial investigation and discovery, Class Counsel was able to intelligently assess the relative merits of

30 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate
to all concerned.” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581.)

1 Plaintiff's claims and Defendant's defenses and effectively negotiate this Settlement. (*Id.*)

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

4 Had the Action not settled, Defendant would have challenged class certification and liability.
5 Defendant has vigorously asserted multiple defenses. Defendant contends, *inter alia*, that Plaintiff and
6 many of the class members have signed enforceable arbitration agreements and class action waivers.
7 (Answer, ¶ 39.) Though Plaintiff disputes the enforceability of such agreements in this field, Plaintiff
8 recognizes the risk that if Defendant were to prevail on this threshold defense, Plaintiff's recoverable
9 damages could be substantially reduced. (Taylor Decl., ¶ 15.) Defendant also contended that Plaintiff's
10 claims for meal and rest periods are entirely preempted by the Federal Motor Carrier Safety Administration
11 ("FMCSA"), and Defendant points to 49 U.S.C. § 14501. (Answer, ¶ 27.) Plaintiff acknowledges that, in
12 light of the FMCSA's 2018 preemption decision (83 Fed. Reg. 67470, 67470 (Dec. 28, 2018)) and the
13 Ninth Circuit's 2021 decision in *Int'l Bhd. Of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.*,
14 986 F.3d 841 (9th Cir. 2021), it is very possible that the Court (or a subsequent appellate court) would find
15 these claims preempted. (*Id.*) Defendant could also argue Plaintiff's claims for wage statement and waiting
16 time penalties claims are entirely derivative of Plaintiff's unpaid wages claims, and therefore suffered from
17 not only the same litigation risks as the wage claims, but also additional risks unique to these claims. (*Id.*)

18 Plaintiff also faced the risk Defendant could successfully argue that its per-trip driver compensation
19 scheme was lawful under the California Supreme Court's decision in *Oman v. DeltaAir Lines, Inc.* (2020)
20 9 Cal.5th 762, which permitted translating contractual compensation for tasks into an average hourly rate
21 to meet minimum wage. (*Id.*; *See, e.g., Ayala v. US Xpress*, 851 Fed.Appx. 53 (9th Cir. 2021) (applying
22 the *Oman* decision to compensation of truck drivers on a piece-rate basis).)

23 Additionally, Defendant contended that individualized questions of fact predominate over any
24 common issues, and these issues would pose challenges to certification. (*Id.*, ¶ 15.) Defendant would have
25 likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide adjudication.
26 (*Id.*) On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to
27 decide Plaintiff's claims on a class-wide basis. Additionally, preparation for trial would have been
28 expensive for all Parties.

29 It is preferable to reach an early resolution of a dispute because such resolutions save time and
30 money that would otherwise go to litigation. Were litigation to proceed, there is a strong likelihood it

1 would be protracted and contentious, as Defendant disputes all aspects of Plaintiff's claims. As a threshold
2 matter, if the Agreement is not approved, Plaintiff will have to prepare and file a motion for class
3 certification, which outcome is uncertain based on Defendant's contentions, *inter alia*, that Plaintiff had
4 signed an enforceable arbitration agreement and class action waiver, that Plaintiff's claims are preempted,
5 that Defendant's compensation policy is lawful, that individual questions of fact predominate, and that
6 Plaintiff cannot show the "willfulness" requirement for Section 203 penalties. (*Id.*, ¶ 14.) If the motion
7 were granted, Defendant would likely move for decertification or appeal certification. (*Id.*)

8 To succeed on the merits, Plaintiff would have to prove Defendant actually engaged in the practices
9 and policies alleged and that those practices and policies violated the law. (*Id.*, ¶ 16.) For some claims,
10 Plaintiff would likely be unable to overcome Defendant's contentions, such as with respect to federal
11 preemption of Plaintiff's meal and rest break claims. (*Id.*) While Class Counsel believe strong evidence
12 exists showing Defendant's liability of Plaintiff's non-preempted claims, there remains a risk that the trier
13 of fact might find otherwise. (*Id.*) If the case were to proceed to trial, additional discovery would be needed
14 and the Parties would thus incur significant additional expenses, which money could go instead to fund a
15 settlement for the benefit of the Class as a whole. (*Id.*) Moreover, discovery disputes would have certainly
16 arisen, which would have cost the Parties additional time and money. (*Id.*) Further, regardless of which
17 Party prevailed, appellate practice would no doubt ensue, further delaying any possible recovery by Class
18 Members. (*Id.*) In other words, both Parties would likely incur substantial attorneys' fees and costs from
19 continued discovery, law and motion, and trial preparation, likely approaching hundreds of thousands of
20 dollars. (*Id.*) Moreover, Plaintiff faced the risk of inability to collect due to Defendant's financial condition
21 as Defendant suffered sizeable financial losses in recent years. (*Id.*) In contrast, the Settlement provides real
22 and significant benefits for the Class Members here and now, while avoiding the further expenses, risks,
23 and delay of prolonged litigation with only the possibility of recovery.

24 Along with determining a well-defined community of interest, courts may also evaluate "the
25 probability that each class member will come forward ultimately to prove his or her separate claim to a
26 portion of the total recovery and whether the class approach would actually serve to deter and redress
27 alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Here, if absent Class Members
28 wished to seek individual legal redress from Defendant for their wage and hour claims by filing suit on
29 their own, they could have requested to opt out of the Settlement. None did. (Simpluris Decl., ¶ 11.)
30 Moreover, individual litigation arising from similar operative facts unduly burden the courts and may

1 produce inconsistent results, which may be avoided here. The Settlement fund created will deter and redress
2 the wage-and-hour violations that Defendant is alleged to have committed.

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

4 A trial court has “broad discretion” to determine “whether a settlement [is] fair and reasonable.”
5 (*Wershba, supra*, 91 Cal.App.4th at 234-235; *In re Cellphone Fee Termination Cases* (2010) 186
6 Cal.App.4th 1380, 1389.) A trial court should consider relevant factors, which may include the strength of
7 a plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of
8 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
9 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
10 governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar v. Foot*
11 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) The court must satisfy itself that the settlement is
12 within the “ballpark” of reasonableness. (*Id.*, at p. 133.)

13 Here, the Settlement, which provides for a GSA of \$517,050.00, is fair, adequate, and reasonable
14 to Class Members. The Settlement was calculated using information and data uncovered through extensive
15 case investigation and discovery and negotiated at arm’s length by experienced counsel. (Taylor Decl., ¶¶
16 6-9, 20.) The Settlement takes into account the potential risks and rewards inherent in any case and, in
17 particular, in this matter. (*Id.*, ¶ 19.) Moreover, considering all of the facts in the cases, the Settlement
18 represents a considerable recovery for a Class of 126 individuals. (*Id.*)

19 As discussed above, Defendant would argue, *inter alia*, that Plaintiff’s meal and rest break claims
20 are entirely preempted by the FMSCA, and Plaintiff has acknowledged it is very possible that the Court
21 would agree. (*Id.*, ¶¶ 13-15.) Defendants would also argue they maintained and implemented a lawful
22 compensation scheme that drivers agreed to and compliant wage and hour policies. (*Id.*) Plaintiff contends
23 otherwise, but faces substantial risk that the Court will disagree. (*Id.*)

24 In addition, with respect to the additional statutory “waiting time penalties” available for unpaid
25 wages pursuant to Labor Code § 203, Defendants deny any willful failure to pay any alleged compensation
26 and could reasonably contend that individual questions of fact predominate as to the predicate
27 “willfulness,” as there are numerous authorities on which Defendants could rely on to demonstrate good
28 faith. This would, if successful, preclude any recovery. *See, e.g., Diaz v. Grill Concepts Services, Inc.*
29 (2018) 23 Cal. App. 5th 859, 868. Moreover, Class Counsel believe it would be difficult to show that the
30 defense is “unsupported by any evidence, [is] unreasonable, or [is] presented in bad faith,” as required.

1 (Taylor Decl., ¶ 14.)

2 Class Counsel carefully considered the viability of Plaintiff's claims. (*Id.*, ¶ 17.) The information
3 gathered, including Plaintiff's calculations based on data and figures provided by Defendant, resulted in
4 estimates of Defendant's exposure and the potential recovery for the putative Class, if Plaintiff were to
5 prevail on all theories of liability at trial. (*Id.*) Had this case gone to trial and Plaintiff prevailed on all
6 liability related to unpaid compensation, these compensatory damages were estimated to total
7 \$1,835,462.25, meaning the proposed \$517,050 equals about 28.2% of that. Further, if one were also to
8 include all possible PAGA penalties, without discretionary reduction by this Court, and add them to the
9 unpaid compensation, together these equal an estimated maximum total exposure of \$6,219,455.73. (*Id.*)
10 However, this maximum exposure calculation fails to account for arbitration agreements and other risks
11 and defenses. (*Id.*) As discussed below, the proposed settlement of \$517,050.00 represents approximately
12 **86.9%** of the *realistic* maximum value after accounting for real litigation risks, relative strengths and
13 weaknesses of Plaintiff's claims, and other factors. (*Id.*)

14 To accounting for the real litigation risks, strengths, and weaknesses of the case, Plaintiff applied
15 the following discounts: 35% discount for the risk of non-certification; at least 50% for the risk of Defendant
16 prevailing on liability, including as a result of the *Oman* defense and Defendant's contention that any
17 misclassification or underpayment was not intentional or willful; 5% discount for the risk that arbitration
18 agreements are found enforceable; 30% discount on penalty claims under *Maldonado*; 85% discount on
19 PAGA claims for the Court's discretion to reduce penalties and underlying risks; and a 25% discount for
20 the risk of inability to collect a judgment. (Taylor Decl., ¶ 18.) Applying these discounts reduces the
21 maximum possible damages and penalties to \$595,333.09. (*Id.*) Thus, the proposed settlement of
22 \$517,050.00 represents approximately **86.9%** of this *realistic* maximum value.

23 Courts have determined that settlements are, of course, reasonable even where plaintiffs recover
24 only a portion of their actual losses. *See, e.g., Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118 F.R.D.
25 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement amounts to only a
26 fraction of the potential recovery does not mean the settlement is unfair or inadequate.”) Indeed, “[a]
27 settlement can be satisfying even if it amounts to a hundredth or even—a thousandth of a single percent of
28 the potential recovery.” (*Id.*; *see also Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS
29 49830 * 17 (approving a settlement of \$75,000 when potential damages were \$1.2 million, or about 6%);
30 *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers,

1 not cash, potentially worth a maximum of 3% if all possible claims were actually made, or \$391.5 million
2 aggregate voucher potential where the class could have recovered \$13.05 billion); *City of Detroit v.*
3 *Grinnell Corp.* (S.D.N.Y. 1972) 356 F. Supp. 1380, 1386, *aff'd in part, rev'd on other grounds*, (2d Cir.
4 1974) 495 F.2d 448 (a recovery of 3.2% to 3.7% of the amount sought is “well within the ball park.”)

5 As this Court knows, the inquiry is not whether the settlement agreement is the best one that class
6 members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate,
7 and reasonable.” (*Chavez*, 162 Cal.App.4th at 55.) The Action involves multiple complex legal issues,
8 including Defendant’s disputed liability for alleged Labor Code violations, federal preemption, arbitration
9 agreements, and class certification. If the proposed Settlement is not approved, the litigation could extend
10 for several years, incurring significant costs for both sides and placing an undue burden on judicial
11 resources. Further litigation would necessitate substantial expenses, such as those associated with expert
12 witnesses, trial consultants, and potentially substantial attorney fees for both parties. (Taylor Decl., ¶ 16.)

13 Accordingly, Class Counsel believes that \$517,050.00 represents a victory on multiple theories and
14 commensurate with any potential recovery at trial, had Plaintiff certified a class and then prevailed, which
15 outcome is not certain. (*Id.*, ¶ 20.) Given the risks inherent in continuing to litigate, including: 1) the
16 possibility of an unfavorable, or less favorable, result at trial, 2) the likely possibility that post-trial motions
17 may similarly result in a less favorable result than at trial, and 3) the possibility of a less favorable result
18 on appeal, with the certainty that the appeal process would be lengthy, the Settlement is a fair, adequate,
19 and reasonable resolution for the Class as a whole. (*Id.*)

20 Furthermore, the \$30,000.00 amount allocated towards PAGA penalties here is fair and reasonable
21 given the nature of the PAGA claims, which has a limited 1-year statute of limitations. Further, as discussed
22 above, the availability of PAGA penalties here rely on contested factual issues, such as whether
23 Defendant’s drivers were misclassified as independent contractors and legality of Defendant’s per-trip
24 compensation structure. (*Id.*, ¶ 21.) Moreover, the PAGA statute provides the Court with broad discretion
25 to adjust and reduce the amount of penalties awarded, if any. *See, e.g., Fleming v. Covidien, Inc.*, No. ED
26 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011) (finding defendant
27 liable for issuing defective wage statements, but reducing civil penalties assessed from \$2.8 million to
28 \$500,000 pursuant to Cal. Lab. Code § 2699(e)(2)). Here, the proposed PAGA allocation of \$30,000.00 is
29 well within a fair and reasonable range in light of PAGA’s purposes to remediate present labor law
30 violations, deter future ones, and maximize enforcement of state labor laws. (*See Williams v. Superior*

1 Court, 3 Cal.5th 531, 546 (2017) [PAGA “sought to remediate present violations and deter future
2 ones”]; *Arias v. Superior Court*, 46 Cal.4th 969, 980, [the declared purpose of PAGA was to augment state
3 enforcement efforts to achieve maximum compliance with labor laws].)

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

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

16 Class Counsel request an award of attorneys’ fees of one-third of the GSA, meaning \$172,350.
17 Although Class Counsel apply pursuant to the percentage-of-the-benefit methodology, the requested fee
18 also is appropriate under a lodestar analysis, or with a lodestar cross-check, and can be alternatively
19 awarded in that manner.

20 **A. Plaintiff Requests a One-Third Percentage-Based Fee Award**

21 California law allows the award of attorneys’ fees in class actions based on the percentage-of-the-
22 fund method. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 486; *Chavez v. Netflix* (2008) 162
23 Cal.App.4th 43, 63 [“fees based on a percentage of the benefits are in fact appropriate in large class actions
24 when the benefit per class member is relatively low”]; *Wershba v. Apple Computer, Inc.* (2001) 91
25 Cal.App.4th 224, 255; *Consumer Cause v. Mrs. Gooch's Natural Food Markets* (2005) 127 Cal.App.4th
26 387, 397 [the common fund doctrine is “frequently applied in class actions when the efforts of the attorney
27 for the named class representatives produce monetary benefits for the entire class”].) There is substantial
28 authority for determining the fee award based on a percentage of the total value of the recovery. The
29 requested fees fall well within an appropriate range under the common fund approach as it is common to
30 award attorney’s fees to class counsel of one-third (33-1/3%) of the settlement amount or higher. (*Chavez*,

1 at 66: “[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is
2 used, fee awards in class actions average around one-third of the recovery.”)

3 In *Laffitte*, the Supreme Court of California, in a case involving an objection to a one-third
4 percentage based recovery in a \$19 million employment class action lawsuit, stated: “We hold further that
5 the trial courts have discretion to conduct a lodestar cross-check on a percentage fee ... [and] also retain the
6 discretion to forego a lodestar cross-check and use other means to evaluate the reasonableness of a
7 requested percentage fee.” (*Laffitte*, 1 Cal.5th at 506, emphasis added.) Several courts have expressed
8 frustration with the alternative “lodestar” approach, which usually involves wading through voluminous
9 and often indecipherable time records. (See, e.g., *In re Activision Securities Litigation* (N.D. Cal. 1989)
10 723 F.Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it provides
11 predictability to class counsel and class members; (2) encourages efficient resolution by providing an
12 incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial records. (*Id.*, at
13 1378-79.) In fact, “[a] task force commissioned by the Third Circuit concluded that the lodestar approach...
14 is a cumbersome, enervating, and often surrealistic process of preparing and evaluating fee petitions that
15 now plagues the Bench and Bar and recommended a return to the percentage of the recovery fee formula
16 in cases involving a settlement fund.” (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28,
17 citations and quotation marks omitted.) In *Lealao*, the Court of Appeal considered counsel’s efficiency and
18 skill in bringing the case to an early resolution.

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

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

B. Analysis Pursuant to the Lodestar Methodology.

Regarding the lodestar methodology, a lodestar figure is calculated by multiplying the reasonable

1 hours expended by a reasonable hourly rate. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 254.)
2 A lodestar amount may be increased by a multiplier. (*Serrano*, 20 Cal.3d at 49; *Beasley v. Wells Fargo*
3 *Bank* (1991) 235 Cal.App.3d 1407.) “Multipliers can range from 2 to 4 or even higher.” (*Wershba*, at 255.)
4 Class Counsel’s lodestar totals \$113,385.00 after voluntary deductions based on business judgment. (Kick
5 Decl., ¶¶ 6-8.)³ This means a multiplier of only approximately 1.52x is required to get to the requested fee
6 of \$172,350, well within the range commonly approved.

7 The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group, Inc.*
8 *v. Drexler* (2000) 22 Cal.4th 1084, 1095). “[I]n assessing a reasonable hourly rate, the trial court is allowed
9 to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’ reputation and
10 status.” (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The trial court may also
11 “find hourly rates reasonable based on evidence of other courts approving similar rates.” (*Parkinson v.*
12 *Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.) The current prevailing billing or
13 “market” rates in the Los Angeles and the Southern California area range from over \$300.00 to over
14 \$1,000.00 per hour.⁴ As can be seen in the Kick Declaration at Paragraph 5, the rates sought here have been
15 approved by numerous courts across the country. (Kick Decl., ¶ 5.) Further, the rates are well within the
16 range of rates awarded in class action litigation in California. (*In re Toyota Motor* (C.D. Cal. 2013) 2013
17 U.S. Dist.Lexis 123298 [approving rate of \$950]; *Banas v. Volcano Corp.* (N.D. Cal. 2014) 47 F.Supp.3d
18 957 [approving 2014 rate of \$1,095; *In re High Tech Emple. Antitrust Litig.*, (N.D. Cal. 2015) 2015 U.S.
19 Dist. LEXIS 118052 *33 [approving rates of \$975 an hour].)

20 Trial courts consider the following factors when determining whether to apply a multiplier: “(1) the
21 novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent
22 to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature

23 ³ Under California law, this Court may award the attorneys’ fees without the attorneys’ timesheets *Concepcion v.*
24 *Amscan Holdings* (2014) 223 Cal.App.4th 1309, 1324; *Raining Data v. Barrenchea* (2009) 175 Cal.App.4th 1363,
25 1375-76 (“[t]he law is clear, however, that an award of attorney fees may be based on counsel’s declarations, without
26 production of detailed time records”). The concurrently filed declarations of Greg Taylor and Taras Kick of The Kick
27 Law Firm, APC detail and summarize the firm’s time spent on this case. Class Counsel can also provide time sheets
28 and make them available for *in camera* review by this Honorable Court if the Court so wishes.

29 ⁴ See, e.g., *McKnight, et al., v. Uber Technologies, Inc., et al.* 3:14-CV-05615-JST, Docket No. 148, [December 8,
30 2017 attorney fee declaration citing *In re High-Tech Employee Antitrust Litig.* (N.D. Cal. Sept. 2, 2015) 2015 WL
5158730, at *9 (finding reasonable “billing rates for partners [that] range from about \$490 to \$975 ... billing rates
for non-partner attorneys, including senior counsel, counsel, senior associates, associates, and staff attorneys, [that]
range from about \$310 to \$800...”]; *Bickley v. CenturyLink, Inc.* (C.D. Cal. Nov. 29, 2016) No. CV 15-1014-JGB
(ASX), 2016 WL 9046911, at *3-4 [finding attorneys’ fee requests of up to \$750 per hour reasonable and in line
with the prevailing rate in the District].). In *Bickley*, a billing survey was submitted from 2013 listing the rates for
partners and associates from large law firms, noting that those rates ranged from a low of \$515/per hour for associates
to \$1,220/per hour for partners. (*Id.*, at ¶ 4.) The majority of the rates for partners were between \$700 and \$1000 per
hour. (*Ibid.*)

of the fee award.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, citations omitted.) In California, “[m]ultipliers can range from two to four or even higher” and are routinely applied. (*Wershba*, 91 Cal.App.4th at 254.)⁵ The goal is “to entice competent counsel to undertake difficult public interest cases.” (*San Bernardino Valley Audubon Soc. v. County of San Bernardino* (1985) 155 Cal.App.3d 738, 755.) Fee awards that are too small “chill the private enforcement essential to the vindication of many rights[.]” (*Lealao*, 82 Cal.App.4th at 53.)

If for whatever reason the Court were inclined to use a percentage lower than one-third, Class Counsel respectfully request a multiplier on the lodestar to allow the awarded attorneys’ fees to arrive at \$172,350. Although there are a number of valid reasons for a multiplier in this case, one is the contingent risk as explained by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133: “A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions.” Further, Class Counsel have devoted significant time and resources to this case, which could have been directed elsewhere. (Kick Decl., ¶ 10.)

Class Counsel seek reimbursement of necessary litigation costs in the amount of \$3,418.09, which is the amount that has been advanced on behalf of the class members to date and is less than the amount represented in the notice to Class Members as “up to \$15,000.” (*Id.*, ¶ 12.) These costs include already incurred costs of court filing fees, LWDA submission fees, and others. (*Id.*)

VII. PLAINTIFF SERVED ADMIRABLY AS CLASS REPRESENTATIVE AND THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE

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

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

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

1 as a result of the litigation. [Citations.] (*Ibid.*)

2 Here, the Court appointed Named Plaintiff Kenneth Kernitzki as Class Representative and approved
3 notifying the Class of his request for a Service Award of \$10,000.00. (Preliminary Approval Order, ¶¶ 2,
4 8.) As mentioned, no objections were received to date. (Simpluris Decl., ¶ 14.) Mr. Kernitzki's requested
5 Service Award is fair and appropriate given: (1) the substantial time and effort he expended; (2) the risks
6 he faces as a result of bringing the Action; (3) the fact he put Class Members' interests ahead of his own;
7 and (4) the substantial benefit conferred upon the Class. (Taylor Decl., ¶ 25; Kernitzki Decl., ¶¶ 5-9.) As
8 described in his concurrently filed declaration, Mr. Kernitzki spent a substantial amount of time and effort
9 producing relevant documents and past employment records and providing the facts and evidence necessary
10 to attempt to prove the allegations, and he estimates devoting more than 100 hours of his time to this case.
11 (Kernitzki Decl., ¶¶ 7-8.) Mr. Kernitzki assisted actively in the investigation of the claims alleged,
12 conferred regularly with counsel, and provided all information requested by counsel to benefit the Class.
13 (*Id.*) Accordingly, it is appropriate and just for Plaintiff to receive a Service Award for his services on
14 behalf of the Class, in addition to his individual payment as a class member.

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

16 As set forth in the accompanying Declaration of Stephen Gomez from Simpluris, Inc., the total
17 costs incurred and to be incurred by Simpluris for the notice and settlement administration process is
18 \$7,000. (Simpluris Decl., ¶ 20.) The costs incurred and to be incurred include, but are not limited to,
19 expenses for printing and mailing two batches of the Notice of Class Action Settlement to Class Members;
20 establishing and maintaining a means to receive and validate opt out requests, objections, or disputes of
21 workweeks submitted by Class Members, including a toll-free telephone number; establishing and
22 maintaining a settlement fund account; processing and mailing payments to the Plaintiff, Class Counsel
23 and Class Members; calculating employer-side taxes and providing appropriate forms and calculations
24 to Defendants; and mailing settlement checks and reminder postcards; among other things. (*Id.*, ¶¶ 3-4, 20.)
25 Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for
26 handling of the notice and settlement process, in the amount of \$7,000.00.

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

28 In granting preliminary approval, this Court already determined that the proposed settlement class
29 is ascertainable and presents a sufficiently well-defined community of interest in questions of law and fact.
30 (Preliminary Approval Order, ¶ 1.) None of the factors have changed with respect to fulfilling the criteria

of California Code of Civil Procedure section 382, and applicable case law, and thus, the proposed settlement class is appropriate for certification.

Numerosity is readily satisfied because there are 126 members in the settlement Class. *See, Vasquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971). (Simpluris Decl., ¶ 8.) Common questions of law and fact predominate because all Class Members were subject to a common policies and practices and paid according to uniform formulae. *See Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Wash. Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001)). Typicality and adequacy of representation are also satisfied as Plaintiff was also subject to the same compensation and employment policies and practices. *See* 7 Newberg § 23:23 (6th ed.) (Kernitzki Decl., ¶ 5.) Plaintiff's interests are essentially identical, if not exactly identical, to those of the Class and there is no conflict between Plaintiff or his counsel, on the one hand, and any other Class Member. *See Richmond v. Dart Industries*, 29 Cal.App.3d 462, 470 (1981). (Taylor Decl., ¶ 26; Kernitzki Decl., ¶¶ 4-7.)

Further, ascertainability also is met as Class members, who all worked for Defendant during the Class Period, share "a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description," (*See Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828), and in addition, Defendant's records readily identified the Class Members based on their dates of employment. (Simpluris Decl., ¶¶ 6, 9.) Indeed, notice was successfully accomplished to the Class Members as ordered by the Court. (*Id.*, ¶ 11.) Lastly, in this matter, where global resolution is achieved for 126 Class Members whose claims which would otherwise be too small to warrant individual litigation, a class action is demonstrably superior to other methods of adjudication. *Richmond, supra*, 29 Cal.3d 462, 469. (*Id.*, ¶ 16.)

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

X. CONCLUSION

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

Dated: July 27, 2023

Respectfully submitted,
THE KICK LAW FIRM, APC

By: /s/ Greg Taylor
Taras Kick
Greg Taylor
Attorneys for Plaintiff and all others similarly situated

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 815 Moraga Drive, Los Angeles, California 90049. On the date of execution below, I served the following document or documents:

- **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF GREG TAYLOR IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL; EXHIBITS;**
- **DECLARATION OF TARAS KICK IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL;**
- **DECLARATION OF KENNETH KERNITZKI IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL;**
- **DECLARATION OF STEPHEN GOMEZ REGARDING NOTICE AND SETTLEMENT ADMINISTRATION;**
- **DECLARATION OF ROBERT WEISSMAN OF PUBLIC CITIZEN FOUNDATION (PLAINTIFF'S PROPOSED CY PRES RECIPIENT);**
- **[PROPOSED] ORDER AND FINAL JUDGMENT THEREON.**

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on an agreement of the parties to accept service by e-mail or electronic transmission and/or emergency orders authorizing electronic service during the COVID-19 pandemic, I caused the documents to be sent to the person[s] at the e-mail addresses below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Victor Consentino victor.cosentino@larsongaston.com Gloria G. Medel (Cal. SBN 199462) Gloria.medel@larsongaston.com CC= Nicole Padget nicole.padget@larsongaston.com LARSON & GASTON, LLP 200 S. Los Robles Ave, Suite 530 Pasadena, CA 91101 T: 626-795-6001 F: 626-795-0016	Attorneys for Defendant QUALITY CAR SHIPPERS, LLC
--	--

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 27, 2023**.

/s/ Dariane Rose

Dariane Rose