

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**
815 Moraga Drive
4 Los Angeles, CA 90049
Tel: (310) 395-2988
5 Fax: (310) 395-2088

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

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

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

13 Plaintiff,

14 v.

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

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

Case No. CVRI2100564

[Assigned to Harold W. Hopp, Department 10]

Complex Class Action

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

Date: May 2, 2023

Time: 8:30 AM

Dept: 10

Reservation No.: 948175813983

[Filed concurrently with the Declaration of Taras Kick; Declaration of Greg Taylor; Declaration of Kenneth Kernitzki; Declaration of Victor Consentino; Declaration of Defendant Quality Car Shippers, LLC, Declaration of Eric Springer; and Declaration of Robert Weissman; Proposed Order.]

Complaint filed: February 5, 2021

Trial date: None set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on **May 2, 2023, at 8:30 a.m.** in Department 10 of the Riverside
3 County Historic Courthouse located at 4050 Main Street, Riverside, CA 92501, proposed class
4 representative Kenneth Kernitzki (“Plaintiff”) will and hereby does move the Court for an order:

- 5 1. Conditionally certifying the Class for purposes of settlement;
- 6 2. Preliminarily approving the proposed class action settlement between Plaintiff and
7 Defendant Quality Car Shippers, LLC, a California limited liability company (“Defendant” or “QCS”), as
8 fair, adequate, and reasonable, based upon the terms set forth in the Parties’ Class Action and PAGA
9 Settlement Agreement (“Settlement Agreement,” “Settlement,” or “SA”), including payment by
10 Defendant of the non-reversionary Gross Settlement Amount (“GSA”) of \$450,000.00 for the Settlement
11 “Class”, and the following estimated allocations therefrom:

12 Attorneys’ Fees (1/3 of the GSA) (maximum)	(\$150,000.00)
13 Litigation Costs (maximum)	(\$15,000.00)
14 Settlement Administration Costs (maximum)	(\$8,000.00)
15 Service Payment to Class Representative	(\$10,000.00)
16 PAGA Payment (75% to LWDA)	(\$30,000.00)

- 17 3. Preliminarily appointing Plaintiff as the Class Representative and Taras Kick and Greg
18 Taylor of The Kick Law Firm, APC as Class Counsel for purposes of settlement;
- 19 4. Appointing Simpluris, Inc. as the third-party Settlement Administrator for mailing notices
20 and for settlement administration; and
- 21 5. Approving the proposed Class Notice and ordering it be disseminated to the Class as
22 provided in the Settlement.

23 The motion is based on this Notice, the attached memorandum of points and authorities, the
24 attached declarations, all matters of which this Court may take judicial notice, all pleadings in this matter,
25 and such evidence and argument as may be presented at the hearing or the Court may allow.

26 Dated: March 30, 2023

THE KICK LAW FIRM, APC

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

TABLE OF CONTENTS

A.	INTRODUCTORY INFORMATION	1
a.	Introduction	1
b.	Identity of the Parties	1
c.	Summary of the Litigation	1
i.	Brief Procedural History	1
ii.	Claims Asserted and General Factual Basis for the Claims.....	2
B.	<i>DUNK/KULLAR</i> ANALYSIS	2
a.	Summary of the Case, Including the Legal and Factual Basis for Each Claim	2
1.	Failure to Pay Meal Period Premiums.....	3
2.	Failure to Pay Rest Period Premiums.....	3
3.	Unlawful Deductions from Wages and Failure to Pay Minimum Wages.....	3
4.	Failure to Pay All Wages Due Upon Discharge of Employment.....	4
5.	Furnish Accurate Wage Statements	4
6.	Failure to Reimburse Necessary Business Expenses	5
7.	Unfair Business Practices.....	5
8.	PAGA Penalties.....	5
b.	Summary of the Investigation and Discovery Conducted.....	6
c.	Summary of Settlement Negotiations	7
d.	Summary of the Risks, Expenses, Complexity, and Duration of Further Litigation	7
e.	Specific Information Demonstrating that the Settlement Is Reasonable.....	8
1.	Risks and Defenses.....	9
2.	Discounts Applied	12
f.	The PAGA Settlement Terms Are Fair and Adequate.....	13
C.	CLASS CERTIFICATION	14
a.	Numerosity	14
b.	Ascertainability	14
c.	Community of Interest	15
1.	Commonality.....	15
2.	Plaintiff's Claims Are Typical of the Class	15
3.	Plaintiff Adequately Represents the Class	15
4.	Superiority.....	15
d.	Adequacy.....	16
D.	THE SETTLEMENT AGREEMENT.....	16
a.	No Claim Form Is Required	16
b.	The Settlement Is Non-Reversionary	16
c.	The Settlement Provides for Separate Employer-Side Taxes and 20% Wage Allocation	17

E.	MISCELLANEOUS.....	17
a.	Notice and Settlement Administration	17
b.	Notice Will Be Given via First Class U.S. Mail and in Both English and Spanish	17
c.	The Proposed Class Notice Satisfies the Requirements of the CMO	17
d.	The Value of Uncashed Checks Will Be Redistributed to Class Members Prior to <i>Cy Pres</i>	17
e.	The Proposed Order Satisfies the Requirements of the CMO	18
F.	ATTORNEYS' FEES AND COSTS	18
f.	THE PROPOSED SERVICE AWARD IS FAIR AND REASONABLE	19
G.	THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING.....	20
H.	CONCLUSION	20

TABLES OF AUTHORITIES

CASES

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591, 620 (1987)	14
<i>Arenas v. El Torito Rests., Inc.</i> , 183 Cal. App. 4th 723, 732 (2010)	15
<i>Arias v. Superior Court</i> , 46 Cal.4th 969	14
<i>Barboza v. West Coast Digital GSM, Inc.</i> , 179 Cal. App. 4th 540 (2009).....	15
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	14
<i>Bell v. Farmers Ins. Exchange</i> , 115 Cal.App.4th 715 (2004).....	19
<i>Block v. Major League Baseball</i> (1998) 65 Cal.App.4th 538	14
<i>Brinker Restaurant Corp. v. Super. Ct.</i> (2012) 53 Cal.4th 1004.....	3
<i>Cal. Pak Delivery v. United Parcel Service, Inc.</i> 52 Cal.App.4th 1 (1997).....	15
<i>Chavez v. Netflix</i> (2008) 162 Cal.App.4th 43	18
<i>Choate v. Celite Corp.</i> (2013) 215 Cal.App.4th 1460,.....	11
<i>Cortez v. Purolator Air Filtration Products Co.</i> (2000) 23 Cal. 4th 163.....	5
<i>Davis v. Cox Commc'ns California, LLC</i> , No. 16cv989 BAS (BLM), 2017 WL 1496407, (S.D. Cal. Apr. 26, 2017)	13
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, (1996).....	14
<i>Fleming v. Covidien, Inc.</i> (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047	12
<i>Garner v. State Farm Mut. Auto. Ins. Co.</i> , No. CV 08 1365 CW (EMC), 2010 WL 1687832 (N.D. Cal. Apr. 22, 2010)	20
<i>General Tel. Co. v. Falcon</i> , 457 U.S. 147, n. 13 (1982)	15
<i>Gonzalez v. Downtown LA Motors</i> (2013) 215 Cal.App.4th 36	4
<i>Int'l Bhd. Of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.</i> , 986 F.3d (9th Cir. 2021) 3, 10	
<i>Jack v. Hartford Fire Ins. Co.</i> , No. 09cv1683 MMA (JMA), 2011 WL 4899942 (S.D. Cal. Oct. 13, 2011)	13
<i>Kullar v. Footlocker</i> (2008) 168 Cal.App.4th 116,.....	8
<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal. 5th 480	18

1	<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19.....	19
2	<i>Linder v. Thrifty Oil Co.</i> , 23 Cal.App.4th 429 (2000).....	15
3	<i>Maldonado, et al. v. Epsilon Plastics, Inc.</i> , 22 Cal.App.5th 1308, (April 18, 2018).....	11
4	<i>Mamika v. Barca</i> , 68 Cal. App. 4th 487, (1998).....	4
5	<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442.....	16
6	<i>Moore v. Fitness Int’l, LLC</i> , No. 12cv1551 LAB (NLS), 2014 WL 12571448, (S.D. Cal. Jan. 22, 2014)	
7		13
8	<i>Morillion v. Royal Packing Co.</i> (2000) 22 Cal.4th 575	3
9	<i>O’Connor v. Uber Techs., Inc.</i> , 201 F. Supp. 3d 1110, (N.D. Cal. 2016).....	13
10	<i>Officers for Justice v. Civil Serv. Comm's</i> , 688 F.2d 615 (9th Circuit 1982).....	14
11	<i>Oman v. Delta Air Lines, Inc.</i> (2020) 9 Cal.5th 762	4, 10
12	<i>Rawlings v. Prudential-Bach Properties</i> (1993) 9 F.3d 513	18
13	<i>Richmond v. Dart Industries</i> , 29 Cal.App.3d 462, (1981).	15, 16
14	<i>Ridgeway v. Wal-Mart Stores, Inc.</i> (N.D. Cal. 2015) 107 F.Supp.3d 1044	3, 4
15	<i>Rodriguez v. West Publishing</i> , 563 F.3d 948 (9th Cir. 2009)	19
16	<i>Ross v. US Bank National Association</i> , No. C 07-02951 SI, 2010 WL 3833922 (N.D. Cal. Sept. 29,	
17	2010)	19
18	<i>Safeway, Inc. v. Super. Ct.</i> (2015) 238 Cal.App.4th 1138	3
19	<i>Singer v. Becton Dickinson & Co.</i> , No. 08cv821 IEG (BLM), 2010 WL 2196104 (S.D. Cal. June 1,	
20	2010)	13
21	<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 1993).....	19
22	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112, (2012).....	12
23	<i>Vasquez v. Superior Court</i> , 4 Cal.App.3d 800 (1971)	14
24	<i>Ward v. United Airlines</i> , 9 Cal.5th 732, (2020).	5, 11
25	<i>Washington Mut. Bank v. Superior Court</i> , 24 Cal. 4th 906 (2001)).	15
26	<i>Williams v. Superior Court</i> , 3 Cal.5th 531, (2017)	14

STATUTES

49 USC § 14501	10
8 Cal. Code Regs. § 11090 (11)	3
8 Cal. Code Regs. § 11090 (12).	3
8 Cal. Code Regs. § 11090, Sec. 7 (A-C).....	5
Bus. & Prof. Code § 17200, <i>et seq</i>	2
Cal. Code Civ. Proc. § 382.....	14
Cal. Labor Code § 221	3
Cal. Labor Code §§ 1194	3
California Rule of Court 3.769(d).....	14
Code of Civil Procedure section 1021.5.....	18
Lab. Code, § 2699(f)(2).....	6
Labor Code § 203	4
Labor Code § 226(a)	4, 5
Labor Code § 226.7.....	3
Labor Code § 2699 (l)	13
Labor Code § 2699(e)(1).....	5
Labor Code § 2699(e)(2),.....	11
Labor Code § 2699.3	1
Labor Code § 2802.....	5
Labor Code § 2802(a)	5
Labor Code § 512.....	3
Labor Code § 558.....	6
Labor Code §§ 201-203.....	4
Labor Code section 1194.....	18

TREATISES

<i>Newberg and Rubenstein on Class Actions</i> , § 3:29.....	15
<i>Newberg on Class Actions</i> , § 3.5.....	14

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. INTRODUCTORY INFORMATION**

3 **a. Introduction**

4 This is an Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement. It asks
5 this Court to take the first step in the approval process after parties in a class action have reached a proposed
6 class action settlement, by deeming that the proposed settlement preliminarily meets the criteria to allow
7 notice to go out to class members, certifying the Settlement Class, appointing Class Counsel and a class
8 representative, and setting the timing and procedures for the future Motion for Final Approval.

9 The underlying putative class action is a trucker wage-and-hour lawsuit. Plaintiff Kenneth Kernitzki
10 brings the action on behalf of himself and a class of approximately 106 similarly situated non-exempt
11 commercial truck drivers in California. Plaintiff alleges that he and his fellow Class Members and aggrieved
12 employees were deprived of certain rights afforded to them by the Labor Code and their agreements with
13 Defendant during their employment with Defendant. Defendant denies these allegations.

14 The proposed settlement is the product of rigorous and good faith negotiations between the parties,
15 conducted at arm's length and without collusion, and is now subject to review and approval by this Court.
16 The fully executed Class Action and PAGA Settlement Agreement and the Codicil to the Settlement
17 (collectively, the "Settlement" or "SA") are attached as Exhibits 1 and 2 to the concurrently filed Declaration
18 of Greg Taylor ("Taylor Decl."). The proposed Class Notice is attached to the Settlement as Exhibit A.

19 This memorandum and the accompanying declarations are intended to demonstrate that the
20 Settlement is fair, adequate, and reasonable and that the requirements for preliminary approval set forth in
21 the Department 10 Case Management Order ("CMO") are satisfied. Plaintiff respectfully requests that the
22 Court preliminarily approve the Settlement so that notice of a final approval hearing may be disseminated.

23 **b. Identity of the Parties**

24 From approximately August 2018 to December 2019, Plaintiff Kenneth Kernitzki ("Plaintiff")
25 worked as a commercial truck driver in California for Defendant Quality Car Shippers, LLC ("Defendant"
26 or "QCS"). (Declaration of Kenneth Kernitzki ["Kernitzki Decl."], ¶ 4.) Defendant is a California-based
27 commercial transportation company. (*Id.*)

28 **c. Summary of the Litigation**

29 **i. Brief Procedural History**

30 On September 11, 2020, pursuant to Labor Code § 2699.3, Plaintiff submitted notice to the Labor

1 and Workforce Development Agency (“LWDA”) and to Defendant, LWDA case number LWDA-CM-
2 805937-20, of his intention to litigate various alleged Labor Code violations. (Taylor Decl., ¶ 3, Ex. 3.)

3 On February 5, 2021, Plaintiff filed the initial complaint on behalf of himself and others similarly
4 situated to recover damages and penalties for the Labor Code violations alleged against Defendant (“the
5 Action”). (*Id.*, ¶ 4.) Plaintiff alleged further that these violations constituted unfair and unlawful business
6 practices under the Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.*, and that Defendant was
7 liable for penalties under the Private Attorneys General Act (“PAGA”), Lab. Code § 2698, *et seq.* (*Id.*)

8 Both before and after initiating the Action on behalf of the putative class, Plaintiff and Class Counsel
9 diligently investigated the claims alleged and conducted legal research regarding Defendant’s potential
10 liability and defenses. (Taylor Decl., ¶¶ 5-7.) The parties engaged in both formal and informal discovery,
11 and Class Counsel reviewed and assessed Defendant’s production of data and documents relating to
12 Plaintiff’s claims. (*Id.*)

13 Based on continued good faith meet and confer efforts, the parties discussed resolution through
14 extensive arm’s-length settlement negotiations. (*Id.*, ¶ 7.) Based on the parties’ substantial investigation and
15 discovery, Class Counsel was able to act intelligently and effectively in negotiating the proposed Settlement.
16 (*Id.*, ¶¶ 5-8.) Plaintiff now seeks preliminary approval of the Settlement. (*See* Exs. 1 and 2.)

17 **ii. Claims Asserted and General Factual Basis for the Claims**

18 This is a trucker wage-and-hour lawsuit. Plaintiff Kenneth Kernitzki (“Plaintiff”) brings nine
19 (9) causes of action on behalf of himself and a class of 106 similarly situated commercial truck drivers in
20 California. Plaintiff alleges that he and his fellow Class Members and Aggrieved Employees were deprived
21 of certain rights afforded to them by the Labor Code during their employment with Defendant. Defendant
22 denies these allegations.

23 The Complaint alleges the following causes of action: 1) failure to provide meal periods; 2) failure
24 to provide rest periods; 3) failure to pay minimum wage; 4) failure to timely to pay all wages due at
25 separation; 5) failure to provide accurate itemized wage statements; 6) failure to indemnify employees for
26 necessary business expenses; 7) unlawful deductions; 8) unlawful and unfair business practices; and 9)
27 PAGA penalties under Lab. Code § 2698, *et seq.* (*See* Complaint.)

28 **B. DUNK/KULLAR ANALYSIS**

29 **a. Summary of the Case, Including the Legal and Factual Basis for Each Claim**

30 Plaintiff’s claims are summarized as follows:

1 1. Failure to Pay Meal Period Premiums

2 Labor Code § 512 and Wage Order 9 require employers to provide duty-free meal periods of not
3 less than 30 minutes within the employee’s first 5 hours of work or pay a meal break premium of an hour
4 of additional pay at the employee’s regulate rate in lieu thereof. 8 Cal. Code Regs. § 11090 (11); *see also*
5 *Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1036-37 Liability arises when an employer
6 adopts a uniform meal period policy that results in violations. Furthermore, the systemic failure to pay meal
7 period premiums is “a dominant common issue [that] makes certification proper.” *Safeway, Inc. v. Super.*
8 *Ct.* (2015) 238 Cal.App.4th 1138, 1153. Here, the Complaint alleges Defendant failed to provide legally
9 required breaks and/or compensate Plaintiff and Class Members correctly because Defendant misclassified
10 Plaintiff and Class members as independent contractors, rather than properly treating them as employees.
11 (Complaint, ¶¶ 18-21.) However, Defendant argues that California’s meal and rest break requirements are
12 preempted by federal law. *See, e.g., Int’l Bhd. Of Teamsters, Local 2785 v. Fed. Motor Carrier Safety*
13 *Admin.*, 986 F.3d 841 (9th Cir. 2021) (affirming the validity of the FMCSA’s decision that California meal
14 and rest break laws are preempted). (Taylor Decl., ¶ 20(b).)

15 2. Failure to Pay Rest Period Premiums

16 Labor Code § 226.7 and Wage Order 9 require employers to provide employees timely, duty-free
17 rest periods of not less than ten (10) minutes for every major fraction of four hours worked or pay an
18 additional hour of pay at the employee’s regulate rate in lieu thereof. 8 Cal. Code Regs. § 11090 (12). The
19 Complaint alleges that Plaintiff and Class Members were denied timely, uninterrupted rest periods without
20 compensation with a rest break premium. (Complaint, ¶¶ 25-26.) As with meal periods, Plaintiff contended
21 this issue is easily certifiable. *See, e.g., Safeway, Inc., supra*, 238 Cal.App.4th at 1153 (finding that the
22 failure to pay statutory premium wage payments for years may constitute a “dominant common issue [that
23 makes] certification proper.”) (internal quotations omitted). However, Defendant again argues California’s
24 rest break requirements are preempted by the FMCSA. (Taylor Decl., ¶ 20(b).)

25 3. Unlawful Deductions from Wages and Failure to Pay Minimum Wages

26 The Labor Code forbids employers from withholding or deducting from the compensation of any
27 employee, with limited exceptions. Cal. Labor Code § 221. The Labor Code also requires employers to pay
28 employees at least minimum wage for each hour worked. Cal. Labor Code §§ 1194, 1197. In California, all
29 time an employee spends subject to the employer’s control is compensable “hours worked.” *Morillion v.*
30 *Royal Packing Co.* (2000) 22 Cal.4th 575, 583; *see also Ridgeway v. Wal-Mart Stores, Inc.* (N.D. Cal. 2015)

1 107 F.Supp.3d 1044, 1053 (truck drivers paid on a piece-rate basis must be separately compensated for
2 unpaid work activities when under the employer's control). In addition, when they are paid on a piece rate
3 basis, employees must be paid separately for non-piece rate associated activities. *Gonzalez v. Downtown LA*
4 *Motors* (2013) 215 Cal.App.4th 36, 47 (“[T]he obligation to pay minimum wages attaches to each and every
5 separate hour worked during the payroll period...”) Where the employer’s compensation scheme combines
6 methods, California law also “prohibits borrowing compensation contractually owed for one set of hours or
7 tasks to rectify compensation below the minimum wage for a second set of hours or tasks, regardless of
8 whether the average of paid and unpaid (or underpaid) time exceeds the minimum wage...[because] it does
9 so only at the expense of reneging on the employer’s contractual commitments, in violation of the contract
10 protection provisions of the Labor Code.” *Oman v. Delta Air Lines* (2020) 9 Cal.5th 762, 781.

11 Plaintiff alleges Defendant unlawfully deducted expenses from driver wages and failed to pay at
12 least minimum wages for all hours worked by misclassifying drivers as independent contractors, requiring
13 drivers to perform off the clock work and inaccurately recording time worked. (See Complaint, ¶¶ 30-31.)
14 Defendant denies these allegations and denies it intentionally or willfully failed to properly classify or
15 compensate its drivers. (See Answer, ¶¶ 22, 24, 29; See also *Oman v. Delta Air Lines*, 9 Cal.5th 762, 772-
16 78 (2020) (holding that Delta’s contracted formula for paying its flight attendants for flight-hours only
17 complied with California law).)

18 4. Failure to Pay All Wages Due Upon Discharge of Employment

19 Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who
20 is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days.
21 Labor Code § 203; *Mamika v. Barca*, 68 Cal. App. 4th 487, 492 (1998). Plaintiff alleges Defendant failed
22 to pay drivers all accrued wages due upon separation, in violation of Labor Code §§ 201-203. (Complaint,
23 ¶¶ 37-38.) As QCS allegedly failed to pay Class Members all meal and rest period penalties and minimum
24 wages due during their employment, Plaintiff asserted that Defendant is subject to waiting time penalties.
25 (*Id.*) Plaintiff also alleged that QCS did not timely pay Plaintiff and other drivers who left QCS all wages
26 upon termination of their employment and are entitled to waiting-time penalties under Labor Code § 203.
27 (*Id.*). Defendant denies these allegations and denies any willful failure to pay all wages. (See Answer, ¶ 22.)

28 5. Furnish Accurate Wage Statements

29 Labor Code § 226(a) requires employers to provide accurate itemized wage statements, including:
30 (1) gross wages earned; (2) total hours worked; (3) the number of piece-rate units earned and any applicable

1 piece rate; ... (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly
2 rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. *See*
3 *also* 8 Cal. Code Regs. § 11090, Sec. 7 (A-C). Plaintiff contended that QCS's wage statements do not
4 provide accurate and complete information, including the correct amount of gross or net wages, total hours
5 worked, and the number of hours worked at each rate, in violation of Labor Code § 226(a). (See Complaint,
6 ¶¶ 41-42.) Defendant denies liability and disputes the allegation of misclassification. (Answer, ¶¶ 1, 30.)
7 Plaintiff concedes that even if drivers are found to be misclassified, under the California Supreme Court's
8 decision in *Ward v. United Airlines*, 9 Cal.5th 732, 760-61 (2020), drivers would only be entitled to
9 California-compliant wage statements during pay periods worked principally within California.

10 6. Failure to Reimburse Necessary Business Expenses

11 Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures
12 or losses incurred by the employee in direct consequence of the discharge of his or her duties. Plaintiff
13 alleged that Defendant violated Labor Code § 2802 by misclassifying class members as independent
14 contractors and thereby failing to reimburse class members for employment-related expenses, such as
15 uniforms, cell phone usage, which should not be shifted to employees. (Complaint, ¶ 46.) Defendant argues
16 it fully complied with workers classification laws and denies liability. (Answer, ¶¶ 1, 29-30.)

17 7. Unfair Business Practices

18 The Labor Code and Wage Orders violations are actionable under Bus. and Prof. Code § 17200.
19 Plaintiff's unfair business practices claim requires only the showing of an unfair, unlawful, or fraudulent
20 business practice by Defendant, which is clearly satisfied by the above-described claims. *See Cortez v.*
21 *Purolator Air Filtration Products Co.* (2000) 23 Cal. 4th 163, 178-179 ("We recognize that any business
22 act or practice that violates the Labor Code through failure to pay wages is, by definition, an unfair business
23 practice"). Here, Defendant's alleged practice of Labor Code and Wage Order violations is, in and of itself,
24 a violation of section 17200. Once a showing has been made, Plaintiff is entitled to restitution going back
25 four years from the filing of the lawsuit, per the four-year statute of limitations. Thus, Plaintiff sought
26 restitution of unpaid wages from February 5, 2017, to the last date of employment for each Class Member.

27 8. PAGA Penalties

28 The Private Attorneys General Act (PAGA) permits aggrieved employees to recover civil penalties
29 specified by the Labor Code that previously only the Labor Commissioner could recover. Labor Code
30 § 2699(e)(1). Under PAGA, a successful employee acting as a private attorney general keeps 25% of the

penalties collected, while 75% goes to the state. Labor Code § 558 provides for a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid as an initial violation and \$100 per subsequent violation. Where the California Labor Code has not specified a monetary penalty for a particular violation, the PAGA imposes penalties for each aggrieved employee of \$100 per pay period for the initial violation and \$200 per pay period for each subsequent violation. Lab. Code, § 2699(f)(2). Here, Plaintiff contends Defendant's Labor Code violations could give rise to substantial PAGA penalties, if proven. (Taylor Decl., ¶ 20(g).) Defendant strongly disputes liability. (*Id.*)

b. Summary of the Investigation and Discovery Conducted

The parties exchanged substantial formal and informal discovery to gather facts and data necessary to support the fairness and reasonableness of the proposed Settlement. (Taylor Decl., ¶¶ 5-6.) With respect to formal discovery, 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.*) 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.*) 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.*)

The investigation and discovery conducted in this matter have been adequate to give Plaintiff and Class Counsel a sound understanding of the merits of their position, Defendant's defenses, and to evaluate the reasonable value range of the claims of the Class. (*Id.*, ¶¶ 5-8.) The discovery conducted and information exchanged allowed Class Counsel to reliably assess the merits of each side's position and compromise the issues on a fair and equitable basis. (*Id.*) Based on their own independent investigation, discovery, and evaluation, and considering Defendant's limited financial resources, Class Counsel has determined that the settlement terms and conditions are in the best interests of Plaintiff and the members

1 of the Class. (*Id.*)

2 **c. Summary of Settlement Negotiations**

3 The Settlement was reached after substantial investigation into the Class claims and extensive,
4 adverse and non-collusive negotiations. (*Id.*, ¶ 7.) Settlement negotiations were conducted in good faith
5 between qualified and experienced Class Counsel at The Kick Law Firm, APC and defense counsel at
6 Larson & Gaston, LLP. At all times, negotiations were vigorous, truly arm's-length and involved a
7 contentious—albeit collegial—debate. (*Id.*) Upon reaching a settlement in principle, the parties negotiated
8 the terms of a long form settlement agreement, which the parties based on a template issued by the Complex
9 Civil Department of the Los Angeles County Superior Court with modifications similar to other recent wage
10 and hour settlements. (*Id.*; Ex. 1) The parties later executed a Codicil, which amended certain terms to ensure
11 compliance with this Court's CMO. (*See* Ex. 2.)

12 **d. Summary of the Risks, Expenses, Complexity, and Duration of Further Litigation**

13 Were litigation to proceed, there is a strong likelihood it would be protracted and contentious, as
14 Defendant disputes all aspects of Plaintiff's claims. Plaintiff would have to prepare and file a motion for
15 class certification, which outcome is uncertain based on Defendant's anticipated contentions, *inter alia*, that
16 individual questions of fact predominate, that Plaintiff had signed an enforceable arbitration agreement and
17 class action waiver, and that Plaintiff cannot show the "willfulness" requirement for Section 203 penalties.
18 (*Id.*, ¶ 9; *See* Answer, ¶ 16.) If the motion were granted, Defendant would likely move for decertification,
19 appeal certification, or move for Summary Judgment. (Taylor Decl., ¶ 9.) Plaintiff believes he would prevail
20 on certification, but the risks to absent Class Members are significant. (*Id.*)

21 To succeed on the merits, Plaintiff would have to prove Defendant actually engaged in the practices
22 and policies alleged and that those practices and policies violated the law. (*Id.*, ¶ 10.) For some claims,
23 Plaintiff would likely be unable to overcome Defendant's contentions, such as with respect to federal
24 preemption of Plaintiff's meal and rest break claims. (*Id.*) While Class Counsel believe strong evidence
25 exists showing Defendant's liability of Plaintiff's non-preempted claims, there remains a risk that the trier
26 of fact might find otherwise. (*Id.*) If the case were to proceed to trial, additional discovery would be needed
27 and the Parties would thus incur significant additional expenses, which money could go instead to fund a
28 settlement for the benefit of the Class as a whole. (*Id.*) Moreover, discovery disputes would have certainly
29 arisen, which would have cost the Parties additional time and money. (*Id.*) Further, regardless of which
30 Party prevailed, appellate practice would no doubt ensue, further delaying any possible recovery by Class

Members. (*Id.*) In other words, both Parties would likely incur substantial attorneys' fees and costs from continued discovery, law and motion, and trial preparation, likely approaching hundreds of thousands of dollars. (*Id.*) Moreover, Plaintiff faced the risk of inability to collect due to Defendant's financial condition as Defendant suffered sizeable financial losses in recent years. (*Id.*)

e. Specific Information Demonstrating that the Settlement Is Reasonable

Plaintiff hereby provides specific information sufficient for the court to make an independent determination that the consideration being received for the release of Class Members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. *Kullar v. Footlocker* (2008) 168 Cal.App.4th 116, 129. Below, Plaintiff sets forth the maximum potential recovery of Plaintiff's claims as calculated based on data and figures provided by Defendant. Thereafter, Plaintiff weighs the defenses asserted by Defendant and other relevant risk factors to consider the realistic risk-adjusted potential recovery.

<i>Figures used for calculations</i>	
106	Number of Employees in Class (provided by defense counsel)
2/5/17-10/8/22	Time period for figures provided by defense
74	Number of PAGA Members (provided by defense counsel)
69%	Percentage of Time Driven in California (based on data sampling provided by defense)
4,086	Total Class Pay Periods Worked by All Class Members (provided by defense)
2,233	Total PAGA Pay Periods in the PAGA Period (provided by defense)
\$9,980.19	Average Gross Pay per Pay Period during PAGA Period (twice a month) (provided by defense)
\$11,225.71	Average Gross Pay per Pay Period during Class Period (twice a month) (provided by defense)
DAMAGES, RESTITUTION & REIMBURSEMENT	
<i>Meal Break Violations - as Compensatory Damages or Restitution</i>	
\$0.00	Maximum Damages for Meal Break Violations (preempted by FMCSA)
<i>Rest Break Violations – as Compensatory Damages or Restitution</i>	
\$0.00	Maximum Damages for Rest Break Violations (preempted by FMCSA)
<i>Unpaid Minimum Wages – as Compensatory Damages & Restitution</i>	
4%	Estimated average percentage of unpaid time worked by Class Members (based on Plaintiff's experience in which he estimates 30 minutes of unpaid work per 12-hour shift)
4,086	Total Class Pay Periods Worked by All Class Members (provided by defense)
\$9,980.19	Average Gross Pay Per Pay Period During PAGA Period (twice a month) (provided by defense)
\$1,631,162.25	Maximum Damages for Unpaid Minimum Wages
<i>Business Expenses - Compensatory Damages or Restitution</i>	
\$50.00	Estimated Unreimbursed/Deducted Expenses Per Pay Period Per Class Member
4,086	Total Class Pay Periods Worked by All Class Members (provided by defense)
\$204,300.00	Maximum Damages for Unreimbursed and/or Deducted Expenses
STATUTORY PENALTIES	

<i>Final Wage Waiting Time Penalties (§ 203)</i>	
86	Terminated Employees Three Years Prior to Complaint (provided by defense)
\$11,225.71	Average Gross Pay Per Pay Period During Class Period (twice a month) (provided by defense)
8	Average Estimated Number of Days Worked Per Class Member Per Pay Period (based on Plaintiff's experience)
30	Maximum Penalty Days Per Employee
\$3,620,291.48	Maximum Labor Code § 203 Final Wage Statutory Penalties
<i>Labor Code § 226(e) Accurate Wage Statement Violation Statutory Penalties</i>	
74	Class Members from One Year Prior to Complaint
30.18	Average Pay Periods Worked by Class Members One Year Prior to Complaint (from defense)
\$50	Penalty Per Pay Period
\$111,666	Maximum Labor Code § 226(e) Accurate Wage Statement Penalties
PAGA PENALTIES	
74	Total Aggrieved Employees (provided by defense)
2,233	Total PAGA Pay Periods (provided by defense)
\$50.00	PAGA Penalty for Failure to Pay Minimum Wage (Cal. Lab. Code § 558)
\$100.00	PAGA Penalty for Wage Statement Violations (Cal. Lab. Code § 226(a))
\$100.00	PAGA Penalty for Other Employment Violations (Cal. Lab. Code § 2699(f)(2))
\$111,650	Maximum Estimated PAGA Penalties for Minimum Wage Violations
\$158,543	Maximum Estimated PAGA Penalties for Wage Statement Violations
\$158,543	Maximum Estimated PAGA Penalties for Failure to Maintain Records
\$223,300	Maximum Estimated PAGA Penalties for Failure to Reimburse Business Expenses
TOTAL DAMAGES & PENALTIES	
\$1,835,462.25	Maximum Total Damages
\$652,036.00	Maximum Total PAGA Penalties
\$3,731,957.48	Maximum Total Statutory Penalties

\$6,219,455.73 Maximum Total Damages and Penalties

Accordingly, if Plaintiff were to prevail on all liability related to unpaid compensation, these compensatory damages total \$1,835,462.25, meaning the proposed \$450,000 equals about 24.5% of that. Further, if one were also to include all possible PAGA penalties, without discretionary reduction by this Court, and add them to the unpaid compensation, together these equal an estimated maximum total exposure of \$6,219,455.73. (Taylor Decl., ¶ 19.) However, this maximum exposure calculation fails to account for arbitration agreements and other risks and defenses. (*Id.*) As discussed below, the proposed settlement of \$450,000.00 represents approximately **75.6%** of the *realistic* maximum value after accounting for real litigation risks, relative strengths and weaknesses of Plaintiff's claims, and other factors. (*Id.*, ¶ 22.)

1. Risks and Defenses.

There were numerous risks to continuing to litigate, including potentially viable defenses that Defendant asserted or could have asserted as outlined below:

1 **Risk of Non-Collection.** Plaintiff faced the risk of inability to collect on a trial judgment due to
2 Defendant’s limited financial resources. Defendant disclosed it suffered from significant financial
3 difficulties in the years prior to reaching the proposed settlement, and produced documents demonstrating
4 that Defendant suffered a loss of \$77,155.00 in 2019 and a loss of \$573,901.00 in 2020. (Taylor Decl., ¶
5 20(a).) In settlement negotiations, Class Counsel considered the impact of Defendant’s financial condition
6 and the realistic risk of non-collection on a judgment. (*Id.*)

7 **Federal Preemption.** Defendant argues that because Defendant is an interstate carrier, Plaintiff’s
8 claims are preempted by application of federal law regulating the conduct of interstate transportation
9 including but not limited to 49 USC § 14501. (*See Answer*, ¶ 27.) Defendant further argues that Plaintiff’s
10 claims under the Labor Code and Plaintiff’s claims of misclassification are preempted by the FAAAA
11 because such claims would alter the terms of the parties’ privately negotiated contracts. (*Id.*, ¶¶ 26, 30.)
12 Moreover, Plaintiff anticipates he would be unable to overcome any argument that the meal and rest break
13 claims are entirely preempted by the FMCSA’s 2018 preemption decision (83 Fed. Reg. 67470, 67470 (Dec.
14 28, 2018)) and the Ninth Circuit’s 2021 decision in *Int’l Bhd. Of Teamsters, Local 2785 v. Fed. Motor*
15 *Carrier Safety Admin.*, 986 F.3d 841 (9th Cir. 2021). (Taylor Decl., ¶ 20(b).)

16 **Arbitration Agreements.** Defendant might try to argue that Plaintiff and many members of the
17 putative class are subject to binding arbitration agreements, which would not only prevent class certification,
18 but also allow Defendant to compel to arbitration any such driver who becomes a party to the action.
19 (Answer, ¶ 39.) Though Plaintiff very strongly disputes the enforceability of such arbitration agreements in
20 this field, possibly the court might disagree, which could preclude certification or substantially reduce the
21 potential recoverable damages. (Taylor Decl., ¶ 20(c).)

22 **Legality of Defendants’ Compensation Policy.** Plaintiff faces the risk Defendant’s driver
23 compensation scheme could be found lawful based on the Supreme Court’s decision in *Oman v. Delta Air*
24 *Lines, Inc.*, (2020) 9 Cal.5th 762. The *Oman* Court held that “[f]or purposes of evaluating whether an
25 employee has received at least the hourly minimum wage for tasks or periods compensated under the
26 contract, it is generally permissible to translate the contractual compensation—whether it be done by task,
27 work period, or other reasonable basis—into an hourly rate by averaging pay across those tasks or periods.”
28 Plaintiff argued that Defendant required its misclassified drivers to perform work that drivers were not
29 compensated for, such as during unproductive time, because Defendant only paid drivers by the trip. (Taylor
30 Decl., ¶ 20(d).) However, Plaintiff faces significant risk that a Court would agree with Defendant’s position

1 that payment per trip is permissible when based on a contract between the parties if the overall compensation
2 results in an average of at least minimum wage for all time worked. (*Id.*)

3 **Non-Certification and Liability.** Had the Action not settled, Defendant would have challenged
4 class certification and liability, as Defendant vigorously disputes all of Plaintiff's contentions. Plaintiff also
5 faced the risk Defendant would successfully argue that individualized questions of fact predominate over
6 any common issues, and that such issues would preclude certification. (Taylor Decl., ¶ 20(e).) Defendant
7 could argue that the Class is uncertifiable due to hundreds of individual inquiries as to each Class Member's
8 experience with supposedly working unpaid time between paid trips. (*Id.*)

9 **No Derivative Penalties.** Defendant could also argue Plaintiff's claims for wage statement and
10 waiting time penalties claims are entirely derivative of Plaintiff's rest period and wage claims, and therefore
11 suffered from not only the same preemption defense as the rest break claims, but also additional risks unique
12 to these claims. With respect to Plaintiff's waiting time penalty claim, Plaintiff would also be required to
13 establish Defendant's *willfulness*. However, Defendant denies any willful failure to pay any alleged
14 compensation. (*Id.*, ¶ 20(f).) Moreover, "an employer's reasonable, good faith belief that wages are not
15 owed may negate a finding of willfulness." *Choate v. Celite Corp.* (2013) 215 Cal.App.4th 1460, 1468.

16 With respect to Plaintiff's wage statement, wage timing, and records maintenance claims, even if
17 non-certification was not a bar to recovery, Plaintiff concedes that potential recovery is limited to pay
18 periods in which Plaintiff and the Class principally worked in California. *Ward v. United Airlines*, 9 Cal.5th
19 732, 760-61 (2020). (Taylor Decl., ¶ 20(f).)

20 Plaintiff also faced the risk Defendant could rely on *Maldonado, et al. v. Epsilon Plastics, Inc.*, 22
21 Cal.App.5th 1308, 1334-37 (April 18, 2018) where the Court reversed an award for penalties for inaccurate
22 wage statements because the Court found that inaccurate wage statements alone based on derivative Labor
23 Code violations do not justify penalties, and that the plaintiff arguably might need to establish injury from
24 the inaccuracy and independent inaccuracies different from underpayments or derivative claims. This
25 defense could call into question whether the Class could recover derivative penalties under Labor Code §§
26 201-203 and 226 based on underlying claims. While Plaintiff remains prepared to zealously pursue the
27 claims, he recognizes the risks of losing on the merits. (Taylor Decl., ¶ 20(f).)

28 **Discretionary PAGA Penalties.** Under Labor Code § 2699(e)(2), a court may award a lesser
29 amount than the maximum civil penalty specified under PAGA, if based on the facts and circumstances of
30 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive or

confiscatory. Courts have exercised their discretion to reduce the amount of PAGA penalties awarded to as little as \$5.00 per pay period. *See e.g., Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%). Here, Plaintiff's arguments for PAGA penalties rest on the disputed issues of driver classification and the legality of Defendant's per-trip compensation structure. (Taylor Decl., ¶ 20(g).) Defendant argues that any violations were not intentional or willful and that the imposition of penalties in this action would be inequitable and unjust. (*See, e.g., Answer*, ¶ 22.) Plaintiff anticipates Defendant would argue the Court should exercise its discretion to substantially reduce PAGA penalties due to Defendant's financial difficulties and in light of Defendant's alleged good faith efforts to comply with California law. *See* Cal. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012). (Taylor Decl., ¶ 20(g).)

Other Risk Factors. Plaintiff also had to take into account other risks, including, the risks of losing on appeal, the possibility of law changing, and the time value of money, among other things. (*Id.*, ¶ 20(h).)

Costs. The Action clearly involves complex legal issues, including misclassification and class certification. With regard to expected duration, litigating Plaintiff's claims through trial could last two or more years if the proposed settlement is not approved. This would be expensive for all parties and delay or jeopardize what is now a certain recovery for the putative class. (*Id.*, ¶ 20(i).)

2. Discounts Applied

Plaintiff believes it is reasonable when assessing the value of the settlement to consider applying the following discounts: 35% discount for the risk of non-certification; at least 50% for the risk of Defendant prevailing on liability, including as a result of the *Oman* defense and Defendant's contention that any misclassification or underpayment was not intentional or willful; 5% discount for the risk that arbitration agreements are found enforceable; 30% discount on penalty claims under *Maldonado*; 85% discount on PAGA claims for the Court's discretion to reduce penalties and underlying risks; and a 25% discount for the risk of inability to collect a judgment. (Taylor Decl., ¶ 21.) Applying these discounts reduces the maximum possible damages and penalties to \$595,333.09, as summarized below.

REALISTIC ESTIMATED MAXIMUM VALUE							
Claims	Max. Potential	Non-Certification	Liability	Arb. Clause	Non-Collection	Other Risks	Risk-Adjusted
Unpaid Minimum Wages	\$1,631,162.25	35%	50%	5%	25%	-	\$377,716.01
Unreimbursed Expenses	\$204,300.00	35%	50%	5%	25%	-	\$47,308.22

Final Wage Statutory Penalties (L.C. § 203)	\$3,620,291.48	35%	90%	5%	25%	30%	\$117,365.32
Wage Statement Penalties (L.C. § 226(e))	\$111,666.00	35%	50%	5%	25%	30%	\$18,100.36
Maximum PAGA Penalties	\$652,036.00	-	50%	5%	25%	85%	\$34,843.17
Total realistic expected value of Class claims							\$595,333.09

The negotiated gross settlement amount (“GSA”) of **\$450,000.00** thus represents about **75.6%** of the realistic risk adjusted exposure. (*Id.*) As discussed in the concurrently filed Taylor Decl., Class Counsel estimates that the average Individual Class Payment will be approximately \$2,235.85, and that the highest Individual Class Payment will be approximately \$7,830.40. (*Id.*, ¶ 23.) Considering the potential risks and rewards inherent in any case and, in particular, in this matter, this represents a considerable recovery.

f. The PAGA Settlement Terms Are Fair and Adequate.

When PAGA claims are settled, the trial court must “review and approve” the settlement. Labor Code § 2699 (l). In so doing, the court must consider whether the proposed “PAGA settlement is fair and adequate in view of the purposes and policies of the statute.” *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). The \$30,000.00 amount allocated towards PAGA penalties here is fair and reasonable given the nature of the PAGA claims, which has a limited 1-year statute of limitations. Further, as discussed above, the availability of PAGA penalties here rely on contested factual issues, such as whether Defendant’s drivers were misclassified as independent contractors and legality of Defendant’s per-trip compensation structure. (Taylor Decl., ¶ 20(g).) Moreover, the PAGA statute provides the Court with broad discretion to adjust and reduce the amount of penalties awarded, if any. Courts “repeatedly approve[] PAGA allocations of both smaller amounts and that comprised a smaller portion of the total settlement consideration in the agreements at issue.” *See Davis v. Cox Commc’ns California, LLC*, No. 16cv989 BAS (BLM), 2017 WL 1496407, at *1 (S.D. Cal. Apr. 26, 2017 (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int’l, LLC*, No. 12cv1551 LAB (NLS), 2014 WL 12571448, at *5 (S.D. Cal. Jan. 22, 2014) (approving \$2,500 PAGA allocation when attorneys’ fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement). Here, the proposed PAGA allocation of \$30,000.00 is well within a fair and reasonable range in light of PAGA’s purposes to remediate present

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

C. CLASS CERTIFICATION

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) at 1807 n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court’s fairness review of the settlement protects the interests of the non-representative Class Members. (*Id.*); *see also Officers for Justice*, 690 F.2d at 633 (“Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987)(“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”) As discussed below, for the purposes of this settlement only, the parties ask this Court to provisionally certify the Class, as defined above, under Cal. Civ. Proc. Code § 382.

a. Numerosity

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. Code Civ. Proc. § 382. Numerosity is readily satisfied here because Defendant’s records indicate there are 106 class members. (Taylor Decl., ¶ 25.) *See, Vazquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971); *Newberg on Class Actions*, § 3.5 (4th Ed. 2004) (40 class members is sufficient to satisfy numerosity).

b. Ascertainability

A test for ascertainability is whether the class definition “identifies a group of unnamed plaintiffs by describing 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.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828; *Block v. Major League Baseball* (1998) 65 Cal.App.4th 538, 541-42. Here, this is satisfied, as the Settlement Class is identifiable from Defendant’s records. (SA, ¶ 4.2.)

1 **c. Community of Interest**

2 The community of interest requirement has three essential elements: “(1) predominant questions of
3 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
4 who can adequately represent the class.” *Linder v. Thrifty Oil Co.*, 23 Cal.App.4th 429, 435 (2000). As
5 shown below, these elements are met.

6 1. Commonality

7 To justify certification, the class proponent must show that questions of law or fact common to the
8 class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.*,
9 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913
10 (2001)). Here, all Class Members were subject to common policies and practices. (Kernitzki Decl., ¶¶ 5, 8.)

11 2. Plaintiff’s Claims Are Typical of the Class

12 Typicality “focuses on whether there exists a relationship between the plaintiff’s claims and the
13 claims alleged on behalf of the class.” *Newberg and Rubenstein on Class Actions*, § 3:29. Here, this is
14 satisfied as Plaintiff is a member of the proposed class, and was subject to the same employment policies
15 and practices as all other Class Members. (Kernitzki Decl., ¶¶ 5, 8.)

16 3. Plaintiff Adequately Represents the Class

17 Class representatives must establish that they will adequately represent the proposed class. *See*,
18 *Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). This adequacy analysis
19 focuses on any conflicts that would appear between the named Plaintiff and putative class members.
20 *Richmond v. Dart Industries*, 29 Cal.App.3d 462, 470 (1981). The Court must also consider the competency
21 of Plaintiff’s counsel in determining whether to certify a class. *Cal. Pak Delivery v. United Parcel Service,*
22 *Inc.* 52 Cal.App.4th 1, 12 (1997); *General Tel. Co. v. Falcon*, 457 U.S. 147, 157-8, n. 13 (1982). Class
23 counsel and the class representative meet the adequacy requirement.

24 Here, the claims of Plaintiff and the Class Members are coextensive and there is no conflict between
25 Plaintiff and his counsel, on the one hand, and any other Class Member. (Taylor Decl., ¶ 12.) In this case,
26 not only is there not any conflict, but Plaintiff’s interests are essentially identical, if not entirely identical,
27 to the interests of all the members of the Settlement Class. (*Id.*) Therefore, Plaintiff is adequate.

28 4. Superiority

29 Certification of the Class for settlement purposes also is superior here because there will be a global
30 resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to

litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context. *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 469. Thus, the superiority of proceeding through the class action mechanism is demonstrable in this case because, through the class action device, Plaintiff's counsel was able to negotiate a global Settlement with Defendant that, if approved, will provide a sizeable Class of 106 individuals with immediate monetary relief. (Taylor Decl., ¶ 25.)

d. Adequacy

To satisfy the requirement that a class representative and his or her counsel fairly and adequately represent absent class members, the named plaintiff must be represented by counsel experienced and qualified to conduct the pending litigation, and the named plaintiff's interests cannot be antagonistic to those of the class. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. The adequacy requirement is clearly satisfied on both counts. Class Counsel, The Kick Law Firm, APC, has significant experience in complex litigation, including wage and hour class actions, and has been diligent in representing the putative Settlement Class. (Kick Decl., ¶¶ 2-5.) The significant investigation conducted and the Settlement achieved speaks to Class Counsel's adequacy, evidencing Class Counsel ability to secure a favorable proposed settlement that provides substantial benefits to absent Class Members without incurring unnecessary costs or risking the delays and uncertainty of further, protracted litigation.

Plaintiff Kenneth Kernitzki, the proposed Class Representative, has participated actively at all stages of the litigation, and his interests are not in conflict with the absent class members. (Taylor Decl., ¶ 12; Kernitzki Decl., ¶¶ 7-9.) Plaintiff agreed to act as Class Representative and understands his responsibility to assist Class Counsel in prosecuting the action on behalf of the Class. (*Id.*)

D. THE SETTLEMENT AGREEMENT

The Settlement, including the Codicil, set forth all key settlement terms, including the Class definition (Ex. 1, ¶¶ 1.5, 1.9), Class Period (Ex. 1, ¶ 1.12), release terms (Ex. 1, ¶¶ 1.41; Ex. 2, ¶¶ 2-4), monetary terms (Ex. 1, ¶ 3), notice administration terms (Ex. 1, ¶¶ 7.1-7.8), and *cy pres* terms (Ex. 2, ¶ 5).

a. No Claim Form Is Required

There is no requirement for Class Members to submit claims to receive compensation. The Settlement provides that the Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. (SA, ¶ 3.1.)

b. The Settlement Is Non-Reversionary

The Settlement provides that none of the GSA will revert to Defendant. (SA, ¶ 3.1.)

1 **c. The Settlement Provides for Separate Employer-Side Taxes and 20% Wage Allocation**

2 The Settlement provides that in addition to the GSA, Defendant will separately pay any and all
3 employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments and that the
4 Settlement Administrator shall provide the calculations for employer-side payroll taxes. (SA, ¶ 3.1.) In
5 addition, 20% of each Individual Class Payment will be allocated to settlement of wage claims (the “Wage
6 Portion”), to be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member’s
7 Individual Class Payment will be allocated to settlement of claims for interest and penalties (the “Non-
8 Wage Portion”). (SA, ¶ 3.2.4.1.) This allocation was negotiated by the parties and intended to reflect the
9 approximate portion of total damages and penalties estimated to be recoverable damages for wage-related
10 damages. (Taylor Decl., ¶ 41.)

11 **E. MISCELLANEOUS**

12 **a. Notice and Settlement Administration**

13 The Parties have selected Simpluris, Inc. to serve as the Settlement Administrator. (Taylor Decl., ¶
14 32.) The concurrently filed Declaration of Eric Springer on Behalf of Simpluris, Inc. (“Simpluris Decl.”)
15 describes its experience, commitment to security and fee calculation, and attaches the administration bid.
16 (Simpluris Decl., Ex. C.)

17 **b. Notice Will Be Given via First Class U.S. Mail and in Both English and Spanish**

18 Notice will be provided to Class Members by First Class U.S. Mail and will be written in both
19 English and Spanish. (SA, ¶ 1.5.) Simpluris has included the cost of a Spanish translation in its “not to
20 exceed” bid of \$8,000 for administration services. (See Simpluris Decl., Ex. C.)

21 **c. The Proposed Class Notice Satisfies the Requirements of the CMO**

22 The proposed class notice is based on the LA County Superior Court Model Class Action Notice
23 (LASC CIV296), and as discussed in the concurrently filed Taylor Decl., Class Counsel believes the class
24 notice follows each of the requirements of CMO § G(5)(a)-(f), including: advising class members of their
25 likely recovery and how to object to the settlement in writing or at the final approval hearing, informing
26 class members of where to find the Settlement Agreement, providing a description of the release being given
27 by Participating Class Members, and providing a description of the PAGA terms. (Taylor Decl., ¶ 44.)

28 **d. The Value of Uncashed Checks Will Be Redistributed to Class Members Prior to Cy Pres**

29 In light of the Court’s preference, the parties have agreed that the value of any uncashed checks will
30 first be redistributed back to Class members. Simpluris has agreed to conduct this second distribution.
(Simpluris Decl., Ex. C.) The parties further agreed that any unclaimed funds remaining after the second

1 distribution will be distributed, subject to approval by the Court, to the cy pres recipients proposed by the
2 parties: 50% to Public Citizen Foundation and 50% to St. Christopher Truckers Development & Fund Inc.
3 (See Ex. 2, ¶ 5; Declaration of Robert Weissman of Public Citizen Foundation, ¶ 3.)

4 **e. The Proposed Order Satisfies the Requirements of the CMO**

5 The concurrently filed Proposed order includes, as attachments to the order, the proposed notice,
6 proposed exclusion form, and proposed objection form. In drafting the proposed order, Class Counsel has
7 taken care to follow the requirements of CMO § G(4)(a)-(j). (Taylor Decl., ¶ 43.)

8 **F. ATTORNEYS' FEES AND COSTS**

9 Pursuant to Labor Code section 1194 and Code of Civil Procedure section 1021.5, Class Counsel
10 will request, and Defendant will not oppose, attorneys' fees in the amount of \$150,000, or one-third (1/3)
11 of the GSA, and reimbursement of necessary litigation costs not to exceed \$15,000. (SA, ¶ 3.2.2.) There is
12 no fee splitting agreement is at issue here. (Kick Decl., ¶ 6.) Pursuant to the Settlement, Class Counsel will
13 request, and Defendant will not oppose, attorneys' fees in the amount of \$150,000, or one-third (1/3) of the
14 GSA, and reimbursement of necessary litigation costs not to exceed \$15,000. (*Id.*; SA, ¶ 3.2.2.) Although
15 applying pursuant to the percentage of benefit approach rather than a lodestar approach, a lodestar cross-
16 check will only further support the reasonableness of the one-third fee request, and Class Counsel will
17 present a lodestar with the Motion for Final approval should this Court wish to perform a cross-check. (Kick
18 Decl., ¶ 6.) Considering both the risks and the potential value of the litigation, the request, calculated as a
19 percentage of the common fund, is reasonable, as the amounts are well-within the range of fees generally
20 sought and approved in similar class action cases. *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 66
21 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used fee
22 awards in class actions average around one-third of the recovery.")

23 "[T]he court may determine the amount of a reasonable fee by choosing an appropriate percentage
24 of the fund created." *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal. 5th 480, 503. In *Laffitte*, a \$19
25 million employment class action case involving an objection to a one-third percent-based recovery, the
26 California Supreme Court held that "the trial courts have discretion to conduct a lodestar cross-check on a
27 percentage fee . . . [and] also *retain the discretion to forego a lodestar cross-check* and use other means to
28 evaluate the reasonableness of a requested percentage fee." *Id.* at 506 (emphasis added). The percentage
29 approach is preferable to the lodestar calculation approach because it "more accurately reflects the results
30 achieved." *Id.* at 504 (quoting *Rawlings v. Prudential-Bach Properties* (1993) 9 F.3d 513, 516). In fact, "[a]

1 task force commissioned by the Third Circuit concluded that the lodestar approach ... is a cumbersome,
2 enervating, and often surrealistic process of preparing and evaluating fee petitions that now plagues the
3 Bench and Bar and recommended a return to the percentage of the recovery fee formula in cases involving
4 a settlement fund.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 29 (citations and
5 quotation marks omitted). Regardless, as stated, should this Court wish to perform a lodestar cross-check,
6 Class Counsel will also provide its lodestar and detail of the work constituting the lodestar at the time of
7 final approval.

8 **f. THE PROPOSED SERVICE AWARD IS FAIR AND REASONABLE**

9 The Settlement provides a proposed service award of \$10,000 to Plaintiff, (SA, ¶ 3.2.1), which is
10 intended to recognize the time, effort, and risk that Plaintiff undertook in bringing this case and helping to
11 secure the relief obtained for the members of the Class. *See Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th
12 715, 726 (2004) (upholding “service payment” to named plaintiff for his efforts in bringing class
13 case); *Rodriguez v. West Publishing*, 563 F.3d 948, 959 (9th Cir. 2009) (stating that incentive awards are
14 “intended to compensate class representatives for work done on behalf of the class, to make up for financial
15 or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act
16 as a private attorney general.”) To determine the propriety of a service award, courts consider the actions
17 protecting class interests, the benefit provided to the class based on those actions, and the amount of time
18 and effort expended by the plaintiff. *Staton v. Boeing Co.*, 327 F.3d 938, 976-7 (9th Cir. 1993).

19 Here, Plaintiff should be compensated for the significant contributions provided to the Class, the
20 reputational risks he undertook, the time and efforts expended on behalf of the Class, Plaintiff’s entering
21 into a broader waiver of claims outside of the scope of the Class claims released by the Class in the
22 Settlement (SA, ¶ 5.2), and the significant accomplishments of this case. (Taylor Decl., ¶ 12.) Among other
23 things, Plaintiff stepped forward with willingness to serve the Class, provided essential information for the
24 prosecution of this action, and reviewed the settlement documents. (*Id.*) At no time did Plaintiff ever have a
25 guarantee of any personal benefit as a result of this case. (*Id.*) The proposed service award also falls well
26 within the range of reasonable payments awarded to Class Representatives in similar class actions. Other
27 courts in California also regularly award service awards higher than those requested here. *See e.g. Ross v.*
28 *US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010)
29 (approving **\$20,000** enhancement award to Class Representative in California wage-and-hour class action
30 settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist.

LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving “\$25,000 incentive award for each Class Representative” in wage and hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more where . . . the class representative has demonstrated a strong commitment to the class”).)

Finally, at the time of the filing of the Motion for Final Approval, Plaintiff intends to file further detail for this Court’s consideration regarding the time and effort he expended on behalf of the absent class members as a result of having stepped forward to be the class representative.

G. THE COURT SHOULD SCHEDULE 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. Plaintiff proposes the following schedule, subject to the convenience of the Court’s calendar:

Last day for Defendant to deliver Class Data to the Settlement Administrator	May 17, 2023
Last day for Settlement Administrator to send Notice by First-Class Mail	May 31, 2023
Last day for Plaintiff to file Motion for Final Approval / Fee Motion	June 30, 2023
Last day for Class Members to submit objections, challenges to Workweeks and/or Pay Periods, and requests for exclusion (“Response Deadline”)	July 15, 2023
Last day for Parties to respond to objections	July 18, 2023
Hearing on Motion for Final Approval / Fee Motion	July 25, 2023, at _____ a.m./p.m.
Last day to file Final Accounting	March 1, 2024

H. CONCLUSION

For the stated reasons, Plaintiff’s unopposed motion for preliminary approval should be granted.

Dated: March 30, 2023

Respectfully submitted,
THE KICK LAW FIRM, APC

By: /s/ Taras Kick
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 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;
- DECLARATION OF TARAS KICK IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL;
- DECLARATION OF GREG TAYLOR IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL; EXHIBITS;
- DECLARATION OF KENNETH KERNITZKI IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL;
- DECLARATION OF ERIC SPRINGER ON BEHALF OF SIMPLURIS, INC. (PROPOSED SETTLEMENT ADMINISTRATOR);
- DECLARATION OF ROBERT WEISSMAN OF PUBLIC CITIZEN FOUNDATION (PLAINTIFF'S PROPOSED CY PRES RECIPIENT);
- DECLARATION OF DEFENSE COUNSEL VICTOR J. CONSENTINO IN SUPPORT OF PRELIMINARY APPROVAL;
- DECLARATION OF DEFENDANT QUALITY CAR SHIPPERS, LLC IN SUPPORT OF PRELIMINARY APPROVAL.

☒ By electronic service (via electronic filing service provider.) I caused the documents to be electronically transmitted to Case Anywhere, an electronic filing service provider, at www.caseanywhere.com pursuant to the Court's Electronic Case Management Order governing the matter and mandating electronic service to person(s) at the address(es) listed below. The transmission was reported as complete and without error to the addressees as stated below.

Victor Consentino victor.cosentino@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 **March 30, 2023**.

/s/ Dariane Rose
Dariane Rose