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

MATTHEW CORREA, ALEXANDER
HERNANDEZ, and JOHN MARTIN
GARCIA, as individuals and on behalf of all
others similarly situated, and as private
attorney generals,

Plaintiffs,

vs.

FEDEX SUPPLY CHAIN, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CIVDS2023369

**Assigned for All Purposes to:
Hon. David Cohn
Dept. S-26**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

**[Filed concurrently with Notice of Motion and
Motion; Declarations of Zachary M. Crosner
and Larry W. Lee; [Proposed] Order**

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1 **I. INTRODUCTION**

2 Plaintiffs Matthew Correa, Alexander Hernandez, and John Martin Garcia hereby move
3 the Court for an order granting preliminary approval to a proposed non-reversionary class action
4 settlement to resolve wage and hour claims on behalf of approximately 1,400 individuals employed
5 by Defendant FedEx Supply Chain, Inc. (“FedEx” or “Defendant”) in California during the
6 relevant time period. These individuals are broken down into (a) the Sick Pay Class and Additional
7 Hour Class, which include about 600 individuals who allege they received sick pay and/or break
8 premium pay at the incorrect regular rate during the period of August 14, 2018 to May 9, 2022,
9 and (b) the Moreno Valley Class of about 800 individuals employed at FedEx’s Moreno Valley
10 facility during the period of July 1, 2019 to May 9, 2022, and who allege they lost time and pay as
11 a result of being required to undergo extensive security checks “off the clock.”

12 The proposed \$1,400,000 settlement will provide about \$790,000 in cash payments to the
13 settlement class, with an average award estimated at about \$565, with an additional \$12,500 for
14 distribution to Class Members eligible for a PAGA payment. The balance of approximately
15 \$597,500 will cover modest enhancement awards to Plaintiffs, reasonable attorney’s fees and
16 actual litigation costs, settlement administration costs, and payment of civil penalties to the state.
17 The settlement is the product of Plaintiffs’ pre- and post-filing investigation, a pre-mediation
18 exchange of information, and arms-length and adversarial negotiations overseen by experienced
19 and well-regarded mediator Michael Loeb, Esq.

20 The proposed settlement is within the “range of reasonableness” for preliminary approval,
21 and Plaintiffs’ counsel believes the settlement is a significant result for the class given the
22 substantial risks inherent in this matter. Accordingly, Plaintiffs request the Court enter an order:
23 (1) granting preliminary approval to the proposed class action settlement; (2) conditionally
24 certifying the settlement class as defined below; (3) appointing Zachary M. Crosner, Blake R.
25 Jones and Jamie Serb of Crosner Legal, P.C., and Larry W. Lee and Simon L. Yang of Diversity
26 Law Group, P.C., as Class Counsel; (4) appointing plaintiffs Matthew Correa, Alexander
27 Hernandez, and John Martin Garcia as the Class Representatives; (5) appointing Phoenix
28 Settlement Administrators as the Settlement Administrator; (6) approving the form of notice to the

class and the procedure for providing such notice; and (7) scheduling a final fairness hearing.

II. BACKGROUND

On October 27, 2020, Plaintiff Matthew Correa filed a class and PAGA representative action complaint in this Court against Defendant FedEx Supply Chain, Inc. asserting the following causes of action: (1) Violation of Lab. Code §§ 201-204, 246; (2) Violation of Lab. Code §§ 226.7, 512; (3) Violation of Lab. Code § 226; (4) Violation of Bus. & Prof. Code §§ 17200, *et seq.*; and (5) Violation of Lab. Code §§ 2698, *et seq.* Plaintiff Correa worked as a forklift driver for FedEx from December 2019 to October 2020 at its Rialto location. He alleges FedEx underpaid both sick pay and break premiums by failing to account for non-discretionary, non-hourly pay (such as shift differentials, incentive bonuses, etc.) and accordingly did not pay such wages at the “regular rate of compensation.” Plaintiffs also allege FedEx’s underpayment of such wages resulted in wage statement violations and failure to pay wages on separation of employment. [Declaration of Zachary M. Crosner (“Crosner Decl.”), ¶ 3]

Subsequently, on November 30, 2020, Plaintiffs Alexander Hernandez and John Martin Garcia filed a class action against FedEx in Riverside County Superior Court alleging claims for: (1) Recovery of Unpaid Minimum Wages and Liquidated Damages - Labor Code §§ 510, 1194, and 1194.2; (2) Recovery of Unpaid Overtime – Labor Code § 510; (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof – Labor Code § 226.7; (4) Failure to Provide Rest Periods or Compensation in Lieu Thereof – Labor Code § 226.7; (5) Failure to Pay Sick Time Benefits – Labor Code § 246; (6) Failure to Provide Accurate Wage Statements – Labor Code § 226; (7) Failure to Timely Pay Wages During Employment and Upon Separation of Employment; (8) Failure to Maintain Accurate Records; and (9) Violation of the Unfair Competition Law – Bus. & Prof. Code § 17200, *et seq.* [Crosner Decl., ¶ 4]

Hernandez and Garcia worked in FedEx’s Moreno Valley location that primarily handled the shipping of Phillips Sonicare electric toothbrushes. Due to the high value of the product, FedEx required employees at the Moreno Valley facility to submit to extensive security searches, requiring the removal of belts, shoes, emptying pockets, and passing through a metal detector, as well as thorough bag searches. Since they were not clocked in, Plaintiffs allege they lost several

1 minutes of compensable time each shift both undergoing security checks and then waiting in line
2 to clock in. Plaintiffs further allege the security checks rendered meal breaks non-compliant and
3 prevented employees from leaving the premises, or even going outside, during rest breaks.
4 [Crosner Decl., ¶ 5.]

5 FedEx has at all times denied Plaintiffs' allegations and maintained it properly paid all
6 wages due for both sick pay and break premiums, that it paid employees at the Moreno Valley
7 facility an extra 5 minutes per shift to account for security checks, and that its investigation
8 suggests the security checks lasted considerably less than 5 minutes per day. FedEx also argued
9 its time records reflect employees in Moreno Valley typically clocked meal periods lasting over
10 30 minutes even accounting for possible security checks. Additionally, FedEx strongly contends
11 the case cannot be maintained as any kind of class or representative action, arguing that resolution
12 of the security check issue would require resolution of innumerable individual issues and thus class
13 certification would be improper and trial would be unmanageable. [Crosner Decl., ¶ 6.]

14 Since Plaintiffs filed their respective complaints, the Parties engaged in meet and confer
15 discussions regarding discovery, potential law and motion, and the merits of the case, and
16 ultimately agreed to attempt early global mediation. They then engaged in significant informal
17 discovery to facilitate an exchange of information necessary to engage in a meaningful mediation.
18 Consequently, Plaintiffs' counsel reviewed payroll records, personnel policies/handbooks, meal
19 break policies, personnel files, and a random sampling of paystubs and time records produced by
20 FedEx. Defendant also provided documents and information reflecting the estimated total amount
21 of workweeks and pay periods they worked, and average hourly pay rates, among other relevant
22 data. [Crosner Decl., ¶ 7]

23 The Parties then engaged Michael Loeb, a respected mediator with extensive wage and
24 hour class action experience and, on February 9, 2022, participated in a full day mediation with
25 Mr. Loeb. Throughout the day, the arms-length negotiations were hard-fought and adversarial as
26 the Parties exchanged extensive information on their legal and factual positions, and made
27 numerous offers and counter-offers. By the end of the day and after a mediator's proposal, the
28 Parties reached agreement on all major issues and then collaboratively drafted the Stipulation and

Settlement Agreement (“Settlement Agreement”) setting forth the full and final settlement terms. Additionally, Plaintiffs will file a Second Amended Complaint (“SAC”) in this matter to incorporate the plaintiffs and claims from the Riverside case. [Crosner Decl., ¶ 8]

III. PROPOSED SETTLEMENT TERMS

Under the settlement, FedEx will pay \$1,400,000.00 into a common fund, the Gross Settlement Amount or GSA. Attorney’s fees of up to 35% of the GSA (\$490,000.00), litigation costs of up to \$25,000, enhancement awards of \$10,000 each for the plaintiffs (\$30,000 total), settlement administration costs of no more than \$20,000, and a payment of \$37,500 to the Labor & Workforce Development Agency for its share of the PAGA penalties, all will be paid from the GSA. The remainder of approximately \$802,500 will be allocated among the Participating Class Members and PAGA employees based on their total weeks worked during relevant Class Periods. No portion of the GSA will revert to FedEx. [Crosner Decl., ¶ 9]

A. Certification of the Settlement Class

The settlement provides for conditional certification of three settlement classes including (a) the Sick Pay Class consisting of all individuals who worked for FedEx as a non-exempt employee in California from August 14, 2018 to May 9, 2022¹ and received sick pay in the same week they earned non-discretionary incentives, shift differentials, or premium payments; (b) the Additional Hour Class consisting of all individuals who worked for FedEx as a non-exempt employee in California from August 14, 2018 to May 9, 2022 and received break premium pay in the same week they earned non-discretionary incentives, shift differentials, or premium payments; and (c) the Moreno Valley Class consisting all individuals employed by FedEx at the at the Moreno Valley warehouse from July 1, 2019, to May 9, 2022.² The three classes collectively consist of approximately 1,400 individuals. [Crosner Decl., ¶ 10]

¹ The Sick Pay and Additional Hour class period commences on August 14, 2018 to account for a prior class action settlement that resolved overlapping claims.

² The Moreno Valley class period commences on July 1, 2019 as that was the date the Moreno Valley facility came on line.

1 **B. The Benefit Conferred on the Settlement Class**

2 As noted, the settlement obligates FedEx to pay \$1,400,000 to resolve the Settlement
3 Classes' claims, inclusive of attorney's fees and costs. Approximately \$790,000 from the GSA
4 will be distributed to the Participating Class Members, with an additional \$12,500 distributed to
5 those individuals eligible for a PAGA payment. This is a cash settlement that does not require
6 Participating Class Members to submit a claim form to receive their settlement share. Participating
7 Class Members will receive their settlement checks automatically via First Class U.S. Mail.
8 Twenty percent of each settlement share will be allocated to wages and the remaining eighty
9 percent will be allocated to penalties and interest. FedEx will pay any and all applicable employer-
10 side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any
11 amounts not claimed (because a class member does not cash his or her settlement check), plus
12 interest, will be forwarded to the State Controller's Unclaimed Property Fund. [Crosner Decl., ¶
13 11]

14 Each Participating Class Member will receive a share of the Net Settlement Amount based
15 on his or her total weeks worked for FedEx in California during the applicable Class Period(s)
16 while employed in a non-exempt position at the Moreno Valley location, and/or for those work
17 weeks where a class member received sick pay or break premium pay at the incorrect rate. With
18 respect to Overlapping Workweeks where a Moreno Valley Class Member would also qualify as
19 a Sick Pay Class Member or Additional Hour Class Member, such workweeks will be weighted
20 as 1.5 workweeks for purposes of calculating the Moreno Valley Class Member's Individual
21 Settlement Share. Thus, each Class Member's Individual Settlement Share will be calculated using
22 criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
23 wages for missed meal breaks, and potential statutory penalties under applicable law. These
24 methods are intended to ensure each Class Member receives a portion of the available settlement
25 funds corresponding to the relative value of his or her potential claims. The proposed allocation
26 provides a reasonable way to compensate Class Members based on the amount of time they worked
27 for FedEx at the Moreno Valley location and had their time and pay impacted by security checks,
28 as well as the number of instances for all Class Members where they received either sick pay or

break premium pay at the wrong hourly rate due to alleged regular rate miscalculations. The average Class award currently is estimated to be approximately \$565.00, and the average PAGA award is estimated at about \$18. [Crosner Decl., ¶ 12]

C. Settlement Administration

Subject to the Court’s approval, the Parties have agreed on Phoenix Settlement Administrators (“Phoenix”) as the Settlement Administrator. Phoenix is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Phoenix has agreed to cap its fees and costs at \$14,950.00. If the Court approves less than the above amount, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Crosner Decl., ¶ 13; Exh. 2.]

D. The Class Notice

The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about this case and explains the basic settlement terms in plain language. The Notice also sets forth the individualized information used to calculate Class Members’ Individual Settlement Shares and each Class Member’s estimated settlement award. The Notice likewise details the procedures for Class Members to dispute their individual information, the procedure for submitting an objection to the Settlement, and the procedure to request exclusion. In sum, the Notice provides the Class Members with the information necessary to evaluate the Settlement and provides fair opportunity to participate in, opt out of, or object to the proposed Settlement. Coupled with the notice procedure, the proposed Notice provides the Settlement Class with the best notice practicable. [Crosner Decl., ¶ 14]

E. Right to Correct Information, Opt Out, or Object

Class Members will have 45 days to dispute the information in their Notice used to calculate their settlement award, and also have 45 days to submit any objections to the settlement or to request exclusion. In the event a Class Member disputes their individual information, the Settlement Administrator will review the Class Member’s records as well as any additional information submitted, and make a final determination. [Crosner Decl., ¶ 15]

1 **F. Release of Claims**

2 All Participating Class Members will be deemed to release FedEx from all claims alleged
3 in the operative Second Amended Complaint (“SAC”), or that could have been brought based on
4 the allegations in the SAC, including PAGA claims, for the class period of August 14, 2018 to
5 May 9, 2022 for the Sick Pay and Additional Hour Classes, and July 1, 2019 to May 9, 2022 for
6 the Moreno Valley Class. The releases are limited to the claims that were actually pleaded or could
7 have been pleaded based on the alleged facts in the operative SAC. [Crosner Decl., ¶ 16]

8 **G. Attorney’s Fees and Costs, and Plaintiffs’ Enhancement Awards**

9 The settlement provides Defendant will not oppose a request for attorney’s fees not to
10 exceed 35% of the GSA, or \$490,000.00, nor will it oppose a request for reimbursement of
11 litigation costs and expenses of up to \$25,000.00. Defendant also will not oppose a request for an
12 enhancement award to Plaintiffs of not more than \$10,000 each in recognition of their time spent
13 on this matter, the risks they undertook on behalf of the Class, and the benefit conferred to the
14 Class. Plaintiffs and Plaintiffs’ counsel will provide the Court with appropriate summaries and
15 evidence of their efforts and time records in anticipation of the Final Approval Hearing. If the
16 Court approves less than the above amounts, the difference will remain in the Net Settlement
17 Amount for distribution to the Participating Class Members. [Crosner Decl., ¶ 17]

18 **H. PAGA and Notice to the LWDA**

19 As noted, the Parties allocated \$50,000 from the GSA to resolution of Plaintiffs’ claims
20 under PAGA. As required by Labor Code section 2699(l)(2), Plaintiffs notified the LWDA of the
21 settlement and the approval hearing via its online portal. [Crosner Decl., ¶ 18; Exh. 3.]

22 **IV. ARGUMENT**

23 **A. Standard of Review for a Class Action Settlement**

24 The law favors settlement, particularly in class actions where substantial resources can be
25 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
26 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992)
27 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37
28 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly

1 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
2 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
3 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion and ensures
4 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs
5 via a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
6 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

7 The first step is a motion for preliminary approval, through which the parties present the
8 court with the proposed settlement and seek a determination if it is sufficiently fair and reasonable
9 to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of
10 Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the
11 “range of reasonableness” and if notice should be provided to the class regarding the settlement’s
12 proposed terms and conditions, and whether a final fairness hearing should be scheduled.
13 Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins.
14 Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring
15 settlement of class actions, courts generally apply a presumption of fairness to class action
16 settlements when (1) the settlement results from arms-length bargaining, (2) investigation and
17 discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is
18 experienced in similar litigation, and (4) the percentage of objectors is small. Dunk, 48
19 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

20 If the court grants preliminary approval, it then orders notice to the class in an appropriate
21 manner, establishes a schedule and procedures for class members to request exclusion or object,
22 and sets the matter for a final fairness hearing. Typically, any motion for attorney’s fees and costs,
23 and any enhancement for the class representative(s), is filed subsequent to preliminary approval
24 and heard with the motion for final approval, as part of the second step of the two-step approval
25 process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

26 The proposed settlement in this matter warrants preliminary approval under the liberal
27 standard discussed above, as it is fair, reasonable and adequate under all the circumstances, and
28 represents a favorable result for the class.

1 **B. The Proposed Settlement Class Should Be Conditionally Certified**

2 The purpose of conditional class certification for purposes of settlement is to facilitate
3 provision of notice of the proposed settlement’s terms, and the date and time of the final fairness
4 hearing. In this context, courts apply lesser scrutiny than they would otherwise in the context of
5 certifying a class. Dunk, 48 Cal.App.4th at 1807, n.19; Global Minerals & Metals Corp. v. Superior
6 Cour(2003) 113 Cal.App.4th 836, 839 (“[I]t is well established that trial courts should use different
7 standards to determine the propriety of a settlement class.”)

8 In the present matter, conditional certification is proper since this matter satisfies all
9 requirements for class certification under Code of Civil Procedure section 382. First, the class is
10 both sufficiently numerous, consisting of approximately 1,400 individuals, and ascertainable by
11 reference to Defendant’s personnel and payroll records. [Crosner Decl., ¶ 19] Next, Plaintiffs are
12 adequate class representatives, as their claims do not conflict with and are not antagonistic to the
13 claims of other class members. Further, their claims are typical given all three are members of the
14 class and their claims arise from the same employment practices and course of conduct giving rise
15 to the claims of the other class members. [Crosner Decl., ¶ 20] Lastly, their counsel is
16 experienced and adequate class counsel. [Crosner Decl., ¶¶ 32-37; Declaration of Larry W. Lee
17 (“Lee Decl.”), ¶¶ 5-9; Declaration of Simon Yang (“Yang Decl.”), ¶¶ 4-8; Declaration of William
18 L. Marder (“Marder Decl.”), ¶¶ 4-12.]

19 Next, common questions of law and fact predominate – particularly for purposes of a
20 settlement class – as the Class Members all were subject to the same policies regarding calculation
21 of the regular rate for payment of both sick pay and break premiums, and likewise were subject to
22 same alleged “off the clock” work as a result of the security procedures at the Moreno Valley
23 warehouse. Since the focus of the claims against FedEx concerns the legality of common policies
24 applied uniformly to the Class Members, common issues predominate over individualized
25 inquiries concerning liability. Whether FedEx properly calculated and paid for sick pay and break
26 premium pay is a common question applicable to all members of the Sick Pay and Additional Hour
27 classes. Regardless of the outcome, determining these questions will decide liability for all class
28 members one way or another. Similarly, the impact of FedEx’s stringent security measures on

employee pay and time at the Moreno Valley facility raises questions common to all Moreno Valley class members as to whether FedEx properly calculated and paid for all hours worked. [Crosner Decl., ¶ 21.]

By now it is well-settled that a theory of recovery asserting the existence of a uniform policy violating California law is sufficient to satisfy the requirements for class certification. Jones v. Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact or law that supports commonality for class certification”). Lastly, a class action is superior to other means for the fair and efficient adjudication of this controversy. [Crosner Decl., ¶ 22]

C. The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of Reasonableness

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator Michael Loeb, Esq., who has extensive experience mediating wage and hour class actions. [Crosner Decl., ¶ 23.] Plaintiffs’ counsel Zachary M. Crosner, Blake R. Jones, and Jamie Serb of Crosner Legal, P.C., and Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., have years of litigation experience, including litigating wage and hour class actions. Plaintiffs’ counsel is well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Crosner Decl. ¶¶ 32-37; Lee Decl., ¶¶5-9; Yang Decl., ¶¶ 4-8; Marder Decl., ¶¶ 4-12.]

Next, California law recognizes several factors bearing on the fairness, adequacy, and reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2) the strength of plaintiff’s case; 3) the risk, expense, complexity, and likely duration of further litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated below, the proposed settlement satisfies these requirements.

1 Prior to settlement, the parties engaged in extensive informal discovery to facilitate
2 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding
3 FedEx’s payroll practices, pay stubs and time records for a sampling of class members, meal and
4 rest break policies, etc., and information from Defendant regarding class size and breakdown, work
5 weeks, rates of pay, and other information used to formulate a damages model. Plaintiffs’ counsel
6 is confident they obtained sufficient information to enable them to understand the law and facts of
7 this case and make an informed decision regarding the proposed settlement and whether it is in the
8 best interests of the class. [Crosner Decl., ¶¶ 23.]

9 Using that data, Plaintiffs ran various calculations and estimated FedEx’s likely maximum
10 exposure on the class claims at approximately \$8,993,500, including \$1,532,500 on the meal break
11 claims (with about \$8,500 of that total for the regular rate miscalculation), \$2,083,000 on the rest
12 break claims, \$1,607,000 on the wage statement claims, \$2,832,000 on the waiting time penalty
13 claims, \$58,000 on the underpaid sick pay claims, and \$841,000 on the security check “off the
14 clock” claims. Plaintiffs’ counsel substantially discounted the value of these claims, however, in
15 light of the multiple and considerable risks posed by proceeding with the litigation. [Crosner
16 Decl., ¶¶ 24-25.]

17 First, on the “regular rate” claims of the Sick Pay and Additional Hour Classes, FedEx
18 emphasized that, despite the retroactive effect of Ferra v. Loews Hollywood Hotel, LLC (2021)
19 11 Cal.5th 858 (2021), the amount of potentially underpaid sick pay and premium pay is nominal,
20 and thus the bulk of the claim is based on potential waiting time penalties under Labor Code
21 sections 201, et seq. Given the previous split of authority, as discussed in Ferra, FedEx contends
22 there was a good faith dispute as to the applicable legal issues that would mitigate if not eliminate
23 liability for waiting time penalties, per cases such as Amaral v. Cintas Corp. No. 2 (2008) 163
24 Cal.App.4th 1157. [Crosner Decl., ¶ 26.]

25 Next, on the Moreno Valley Class claims arising out of the mandatory security checks,
26 FedEx offered a number of defenses. First, FedEx argued strongly that it undertook time and
27 motion studies and determined the security checks took a minimal amount of time and therefore
28 the additional 5 minutes of pay provided amply compensated employees for the security checks.

1 More specifically to meal breaks, FedEx also argued its time records showed employees at Moreno
2 Valley typically received their full meal breaks, with an average of 31+ minutes per meal period.
3 On the rest break issue, FedEx disputed Plaintiffs’ argument that Moreno Valley Class Members
4 were prevented from leaving the premises and therefore rest breaks were “on duty” under Augustus
5 v. ABM Security Services, Inc. (2016) 2 Cal.5th 257. Finally, FedEx argued that even to the extent
6 security checks or long lines to clock in impacted employee hours worked, a host of individualized
7 inquiries would be necessary to determine the reasons underpinning each instance a class member
8 spent more than 5 minutes undergoing security checks, etc., and accordingly class certification
9 would be inappropriate. [Crosner Decl., ¶ 27]

10 In addition to the wage statement and waiting time penalty claims of the Sick Pay and
11 Additional Hour Classes, Plaintiffs also alleged derivative claims based on the security check/“off
12 the clock” claims that will rise or fall along with that primary claim, in addition to being subject
13 to “good faith” and other defenses available to Defendant. E.g., Amaral, 163 Cal.App.4th at 1203-
14 04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the
15 class prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly,
16 Plaintiffs discounted the derivative claims significantly in light of these multiple potential
17 defenses. [Crosner Decl., ¶ 28]

18 As far as potential PAGA liability, the theoretical penalties theoretically totaled \$15 million
19 or more should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code
20 sections at issue for every single eligible pay period. [Crosner Decl., ¶ 29.] As with the class claims,
21 Plaintiffs discounted the potential PAGA penalties for the multi-layered defenses proffered by
22 Defendant on the merits, and further discounted these claims since the Court possesses wide
23 discretion to reduce such penalties even if Plaintiffs ultimately prevailed. Lab. Code § 2699(f);
24 Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the
25 potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30
26 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just \$5 per pay period, a
27 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions
28 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

Accordingly, the Parties allocated \$50,000 to PAGA penalties, which amount is reasonable and in line with comparable settlements in other class actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement").

The settlement obviates the significant risk that this Court may find any kind of class or representative resolution unachievable or deny certification of all or some of Plaintiffs' claims. Furthermore, even if Plaintiffs certify of all or some of the claims, continued litigation would be lengthy and expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would substantially delay any recovery by the Class with no assurance of recovering significantly more than the proposed settlement. While Plaintiffs are confident in the merits of their claims, legitimate controversies exist regarding each of Plaintiffs' theories of liability. Plaintiffs also recognize proving the amount of wages and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition. [Crosner Decl., ¶ 30.]

Plaintiffs and their counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the Class. The overall \$1.4 million recovery represents a significant percentage of Defendant's potential exposure at roughly 15% of the maximum value

1 of the class claims. Given these risks, a total recovery for the class of \$1,400,000, which will result
2 in average award of some \$565 per class member, is a significant result well within the range of
3 reasonableness considering all potential outcomes, and it will provide direct monetary awards to
4 all Class Members without further delay. [Crosner Decl., ¶ 31.]

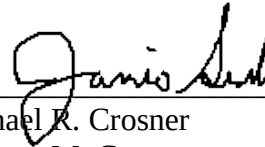
5 Importantly, the mere fact that a settlement does not provide the same recovery as might
6 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
7 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
8 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
9 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement
10 because the public interest may indeed be served by a voluntary settlement in which each side
11 gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir. 2012) 696
12 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is different from the
13 question whether the settlement is perfect in the estimation of the reviewing court”); 7-Eleven
14 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
15 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
16 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); White
17 v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
18 contention settlement was not fair and reasonable even though it represented 99% discount off the
19 maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary
20 and will provide timely benefits to the Class Members without a claims process. White, 803
21 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket
22 Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
23 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
24 claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is
25 within the “range of reasonableness,” and is fair and adequate for the Class.

1 **V. CONCLUSION**

2 For all the foregoing reasons, Plaintiffs respectfully request that the Court grant this
3 motion, conditionally certify the settlement class, grant preliminary approval to the proposed class
4 action settlement, and enter the [Proposed] Order filed herewith.

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6 Dated: July 20, 2022

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