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individually, and on behalf of all others
7 similarly situated and aggrieved

8
9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**
10 **CENTRAL DISTRICT — SPRING STREET COURTHOUSE**

11 JULIO C. POLAR, individually, and on behalf
of all others similarly situated and aggrieved,

12 Plaintiff,

13 vs.

14 BUTTON TRANSPORTATION, INC., a
15 California corporation; BUTTON
TRANSPORTATION, LLC, a Louisiana
16 limited liability company; and DOES 1 through
100, inclusive,

17 Defendants.
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Case No.: 21STCV02575

*[Assigned for all purposes to the Hon. Carolyn B.
Kuhl, Dept. 12]*

COMPLEX CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT; PROOF OF
SERVICE**

Date: May 31, 2023

Time: 10:30 a.m.

Dept: 12

[Filed concurrently with Declarations of Taras
Kick and Julio C. Polar in Support of Plaintiff's
Motion for Final Approval; Declaration of
Lindsay Kline Regarding Notice and Settlement
Administration; Declaration of Robert Weissman
of Public Citizen Foundation; Declaration of
Susan L. Dold; Declaration of Robert L. Button]

Complaint filed: January 21, 2021

FAC filed: April 20, 2021

Trial date: None set

1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS:**

2 **PLEASE TAKE NOTICE** that on May 31, 2023, at 10:30 a.m. in Department 12 of this Court,
3 or as soon thereafter as the matter as the matter may be heard, Plaintiff Julio C. Polar (“Plaintiff”)
4 respectfully moves this Court for an order that:

5 1. Finally approves of the proposed class action settlement described herein and as set forth
6 in the parties’ Settlement and Release Agreement (“Settlement,” “Settlement Agreement,” or “SA”),
7 on the grounds that the Settlement is fair, reasonable and adequate for all Class Members;

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

9 3. Finds that the Court-approved Class Notice distributed to the Settlement Class pursuant
10 to the Court’s December 6, 2022 Order granting preliminary approval constituted the best notice
11 practicable under the circumstances;

12 4. Orders Defendants to remit payment of \$800,000.00 to the Settlement Administrator;

13 5. Orders the Settlement Administrator to distribute \$30,000.00 to the California Labor and
14 Workforce Development Agency (“LWDA”) for penalties pursuant to the Labor Code Private
15 Attorneys General Act of 2004 (“PAGA”), and to distribute \$10,000.00 in PAGA penalties to
16 Aggrieved Employees;

17 6. Approves the award of \$10,000.00 to Plaintiff Julio C. Polar as a Class Representative
18 Service Award for his time and effort in representing the Class and orders the Settlement Administrator
19 to distribute the award to Plaintiff Polar; and,

20 7. Approves Class Counsel’s Attorneys’ Fees Award in the amount of \$266,667 or one-third
21 (33-1/3%) of the total recovery and \$9,811.49 for reimbursement of costs incurred by Class Counsel in
22 connection with the prosecution of this action, and to distribute \$9,972.00 in Settlement Administration
23 Costs to itself, Simpluris, Inc.

24 Plaintiff shall also request that this Court enter a Final Judgment, which includes a provision
25 for this Court’s retention of jurisdiction over the parties to enforce the terms of the judgment.

26 This Motion is made pursuant to Rules of Court, Rules 3.764, 3.766, and 3.769, and Code of
27 Civil Procedure section 382, and is based on this Notice, the attached Memorandum of Points and
28 Authorities, the accompanying Declaration of Taras Kick (“Kick Decl.”) and exhibits thereto, the
29

1 Declaration of Julio C. Polar (“Polar Decl.”), the Declaration of Lindsay Kline Regarding Notice and
2 Settlement Administration (“Kline Decl.”), the Declaration of Robert Weissman of Public Citizen
3 Foundation (“Weissman Decl.”), the complete files and records of this case, and any other evidence or
4 oral argument which may be considered by the court at the time of the hearing.

5 Dated: May 8, 2023

Respectfully submitted,
THE KICK LAW FIRM, APC

8 By: /s/ Greg Taylor
9 Taras Kick
10 Greg Taylor
11 Attorneys for Plaintiff
12 Julio C. Polar and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY**

3 This is a trucker wage-and-hour lawsuit. Plaintiff Julio C. Polar (“Plaintiff”) filed this class and
4 representative action (“the Action”), individually and on behalf of all others similarly situated, on
5 January 21, 2021, alleging systematic illegal payroll practices and policies of Defendants Button
6 Transportation, Inc. (California corporation), Button Transportation, LLC (Louisiana limited liability
7 company), Button Transportation, LLC (Florida limited liability company), and Robert L. Button
8 (collectively, “Defendants” or “Button Transportation”). (collectively with Plaintiff, “the Parties”).

9 After engaging in a private mediation with an experienced mediator, the Parties ultimately
10 reached the proposed Settlement. (See, concurrently filed Declaration of Taras Kick [“Kick
11 Declaration”], ¶ 16.) A true and correct copy of the fully executed Settlement and Release Agreement
12 (“Settlement,” “Settlement Agreement,” or “SA”) is attached as **Exhibit 1** to the Kick Declaration. This
13 Court granted preliminary approval to the proposed settlement in an Order dated December 6, 2022,
14 and conditionally certified the following Settlement Class: All current and former drivers who worked
15 for Defendants in the State of California at any time within the Class Period, from January 21, 2017,
16 through October 24, 2022. (See Order Granting Preliminary Approval of Class and PAGA
17 Representative Action Settlement [“Preliminary Approval Order”], ¶ 1.)

18 The Court found preliminarily that the Settlement terms appear to be “within the range of
19 fairness, adequacy, and reasonableness of a settlement that ultimately could be granted final approval
20 by the Court at the final approval hearing.” (Preliminary Approval Order, ¶ 1.) The Court also found
21 that, for purposes of settlement, “the proposed Class is ascertainable and presents a sufficiently well-
22 defined community of interest in questions of law and fact.” (*Id.*)

23 In its Order, the Court appointed Simpluris, Inc. (“Simpluris”) as the Settlement Administrator
24 under the terms of the Settlement Agreement (*Id.*, ¶ 4); approved the proposed Notice as to form and
25 content (*Id.*, ¶ 8); found that the methods of giving notice prescribed in the Settlement Agreement meet
26 the requirements of due process, are the best notice practicable under the circumstances, and constitute
27 valid, due and sufficient notice to all members of the Class (*Id.*); and, directed the Parties and
28 Administrator to carry out the proposed Settlement according to its stated terms. (*Id.*, ¶ 10.)

29 Plaintiff can now report that the notice program ordered by this Court has been very successful,

1 and Plaintiff therefore presents the matter for final approval. Specifically, as evidenced by the
2 concurrently filed Declaration of Lindsay Kline of the court-appointed claims administrator Simpluris,
3 there was a successful deliverable rate of 99.1%. (Declaration of Lindsay Kline Regarding Notice and
4 Settlement Administration, dated May 4, 2023 [“Kline Decl.”], ¶¶ 8-9.)

5 Further, not a single class member has objected to any aspect of the proposed settlement, and
6 not a single Class Member has elected to opt out of the proposed Settlement being presented to this
7 Court for final approval. (*Id.*, ¶¶ 10-13.) Therefore, if these numbers do not change, if this Court
8 approves the proposed Settlement in full, Settlement Class Members will be paid their portion of the
9 Net Settlement Amount averaging \$668.90 per Class Member, including a highest estimated payment
10 of \$4,820.63. (*Id.*, ¶¶ 14-16.) This is in addition to 404 Aggrieved Employees receiving their
11 proportionate share of \$10,000.00 in PAGA penalties, with an estimated average Individual PAGA
12 Payments of \$24.75 and the highest estimated award of \$683.33. (*Id.*, ¶ 17.)

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

20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

21 **A. Factual Background**

22 Plaintiff Julio C. Polar worked as a commercial truck driver for Defendants Button
23 Transportation within the State of California.¹ (Declaration of Julio C. Polar [“Polar Decl.”], ¶ 4.)
24 Button Transportation is a California-based commercial transportation company, and Robert L. Button
25 is the CEO of Button Transportation. (*Id.*) Plaintiff brings this action on behalf of himself and a class
26 of 693 similarly situated non-exempt commercial truck drivers in California, alleging that he and his

27
28 ¹ Button Transportation, Inc. (CA corporation) and Robert L. Button dispute that they employed Plaintiff. Defendants
29 contend Plaintiff’s only employer was Button Transportation LLC (a foreign limited liability company originally formed in
Louisiana, then dissolved and reformed in Florida). Plaintiff contends Defendants jointly do business as “Button
Transportation,” have officers in common, share a business address, and operate at the direction of Robert L. Button.

1 fellow Class members and aggrieved employees were deprived of certain rights afforded to them by
2 the Labor Code during their employment with Defendants.

3 **B. Procedural History**

4 On January 20, 2021, pursuant to Labor Code § 2699.3, Plaintiff submitted notice to the Labor
5 and Workforce Development Agency (“LWDA”) and to Defendants Button Transportation, Inc. and
6 Button Transportation, LLC (a Louisiana LLC), LWDA Case No. LWDA-CM-819220-21, of his
7 intention to litigate various alleged Labor Code violations. (Kick Decl., ¶ 10, Ex. 2.)

8 On January 21, 2021, Plaintiff filed the initial complaint on behalf of himself and others
9 similarly situated to recover for wage and hour violations alleged against Defendants. On April 20,
10 2021, Plaintiff filed the First Amended Complaint (“FAC”). (*Id.*, ¶ 11.) Plaintiff’s FAC alleges the
11 following causes of action: 1) failure to provide meal periods; 2) failure to provide rest periods; 3)
12 failure to pay minimum wage; 4) failure to timely to pay all wages due at separation; 5) failure to
13 provide accurate itemized wage statements; 6) failure to indemnify employees for necessary business
14 expenses; 7) unlawful deductions from wages; and 8) unlawful and unfair business practices in
15 violation of Bus & Prof. Code § 17200, *et seq.*, and 9) violation of PAGA, Lab. Code § 2698, *et seq.*
16 On September 17, 2021, Plaintiff amended the complaint to designate Does 1 and 2 as named
17 defendants Button Transportation, LLC (a Florida LLC) and Robert L. Button. (*Id.*)

18 With respect to the alleged meal and rest period violations, Plaintiff’s meal break claim also
19 contends that Defendants breached material terms of the employee handbook and are liable for meal
20 break premiums required by the Labor Code as a matter of contract. (*Id.*, ¶ 12.) On March 31, 2022,
21 Plaintiff sent Defendants a draft Second Amended Complaint to separate Plaintiff’s Labor Code and
22 contract theories into separate causes of action and a proposed stipulation to amend. Thereafter,
23 Defendants agreed to mediate as to the entire class. (*Id.*) If the Action did not settle, Plaintiff would
24 seek to file the amended complaint separating out the meal break claim for breach of contract. (*Id.*)

25 With respect to any dispute regarding joint liability, Plaintiff contends Defendants’ records
26 show the entities at issue are alter egos that relied on and implemented virtually, if not actually, identical
27 policies. (*Id.*) Additionally, Plaintiff contends that Defendant Robert L. Button can be held personally
28 liable. (*Id.*) Defendants have denied and continue to deny Plaintiff’s allegations. (*Id.*)

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

2 Prior to attending private mediation, Plaintiff gathered the facts and data necessary to reach a
3 fair and reasonable settlement. (*Id.*, ¶¶ 13-15.) The Parties engaged in substantial formal discovery,
4 including propounding interrogatories and production demands on Defendants, which Class Counsel
5 used to evaluate the value of the claims. (*Id.*) Among other things, Plaintiff received and reviewed
6 hundreds of pages of data and documents, including Defendants’ written policies, Class members’
7 driving logs, and a detailed sample of its non-exempt employees’ timekeeping and payroll records. (*Id.*)
8 Class Counsel retained an economic expert, Berger Consulting Group, who then analyzed the data and
9 created a damages model based on it. (*Id.*) Class Counsel carefully considered the class claims at issue
10 and its expert’s analysis of violation rates for Defendant’s timekeeping and payroll data. Moreover,
11 Plaintiff contended Defendants’ records show drivers were uniformly denied the opportunity to take
12 compliant meal and rest periods, as defined in the Employee Handbook or statute. (*Id.*) Defendants
13 vigorously contested liability.

14 Based on good faith meet and confer efforts, the Parties agreed to proceed to mediation with
15 Alan R. Berkowitz of Judicate West, a mediator with significant experience in mediating wage and
16 hour class actions. (*Id.*, ¶ 16.) On April 28, 2022, the Parties attended a full-day, private mediation with
17 Mr. Berkowitz. (*Id.*) Through extensive arm’s-length negotiations with the assistance of Mr. Berkowitz,
18 the parties ultimately reached a settlement in principle. (*Id.*)

19 On October 24, 2022, Plaintiff filed a Motion for Preliminary Approval of Class and PAGA
20 Action Settlement and supporting documents. (*Id.*, ¶ 17.) On December 6, 2022, the Court entered the
21 Order Granting Preliminary Approval of Class and PAGA Representative Action Settlement
22 (“Preliminary Approval Order”), preliminarily approving the terms of the Settlement Agreement, the
23 Class Notice, and the proposed administration procedures and associated deadlines. (*Id.*)

24 Plaintiff now moves for final approval of the Settlement Agreement.

25 **III. SUMMARY OF PROPOSED SETTLEMENT AGREEMENT**

26 **A. Settlement Amount and Funding after Final Judgment**

27 Defendants have agreed to pay a gross settlement amount of \$800,000.00 to fund all payments
28 pursuant to the Settlement, including: Individual Settlement Payments for wages, penalties, and
29 interest; a proposed Class Representative Service Award, subject to Court approval; Attorneys’ Fees

1 and Costs to Class Counsel, as approved by this Court; Settlement Administration Costs; and an
2 allocation for penalties under PAGA (the “PAGA Penalties”). (SA, § 3.) Furthermore, Class Members
3 are not required to submit a claim form, and there is no reversion of any residual funds to Defendants.
4 (*Id.*) Defendants will deposit the GSA with the Settlement Administrator within 30 days of the Effective
5 Date. (SA, ¶ 4.3.) Defendants will separately pay the employer’s payroll tax obligations on the wage
6 portion of Individual Settlement Payments in addition to the GSA. (*Id.*)

7 **B. No-Claim Form Settlement Binding on Parties.**

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

10 **C. Release.**

11 Upon the Effective Date, Plaintiff and Participating Class Members shall be deemed to have
12 settled and released the Released Parties of all Released Claims (SA, ¶ 5.3). Plaintiff shall further be
13 deemed to have released the Released Parties of a General Release, including by waiver of Civil Code
14 section 1542. (SA, ¶ 5.2.) The Release agreed to by the Parties does not contain any terms outside the
15 scope of the Action and are limited to those claims arising during the Class Period. (SA, ¶¶ 1.39, 5.1-
16 5.4.) Only Plaintiff, not any other Class Members, is bound by a further release pursuant to Code of
17 Civil Procedure section 1542. (SA, ¶ 5.2.2.) The PAGA release covers both Participating and Non-
18 Participating Class Members who are Aggrieved Employees and releases all claims for penalties
19 pursuant to PAGA based on the Released Class Claims as alleged in the PAGA Notice. (SA, ¶ 1.40.)
20 Released PAGA Claims are limited to claims arising during the PAGA Period. (*Id.*)

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

22 The Net Settlement Amount (“NSA”) shall be calculated by deducting from the Gross
23 Settlement Amount the following: (i) Class Counsel’s attorneys’ fees and costs, (ii) the Class
24 Representative Service Award, (iii) the PAGA Penalties, and (iv) the Settlement Administration Costs.
25 (SA, ¶ 1.28.) Under the Settlement, each Participating Class Member will be entitled to payment of a
26 pro rata portion of the Net Settlement Amount. (SA, ¶¶ 1.23-1.24.)

27 The amount to be paid to each Class Member who does not opt out (“Participating Class
28 Member”) will be calculated by dividing the NSA by the total number of Workweeks worked by all
29 Participating Class Members in California during the Class Period and then multiplying the result by

1 each Participating Class Member’s Workweeks. (SA, ¶ 3.2.4.) The Settlement Administrator has
2 calculated the average estimated Individual Settlement Payment to be \$668.90, and the highest
3 estimated Individual Settlement Payment to be \$4,820.63, after taking into account all proposed
4 disbursements. (Kline Decl., ¶ 16.)

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

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

8 The PAGA Award is \$40,000, with \$30,000, or 75%, to be made payable to the Labor and
9 Workforce Development Agency (“LWDA”), and the remaining \$10,000, or 25%, to be distributed to
10 Aggrieved Employees based on the number of weeks that each Aggrieved Employee worked between
11 January 20, 2020, and April 1, 2022 (“the PAGA Period”). (SA, ¶ 1.31.)

12 Individual PAGA Payments will be based on the number of pay periods worked during the
13 PAGA Period by each Aggrieved Employee. (SA, ¶ 3.2.5.1.) All Aggrieved Employees will be sent
14 Individual PAGA Payments, including those who do not participate in the Class Settlement. (SA, ¶
15 4.4.1.)

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

17 No money will revert to Defendants under any circumstances. If any Individual Settlement
18 Payment check remains uncashed after one hundred eighty (180) days from the date the check is issued,
19 such check(s) will be cancelled. (SA, ¶ 4.4.1.) Thereafter, subject to this Court’s approval, the funds
20 represented by any uncashed checks shall be distributed to two 501(c)(3) non-profit organizations as
21 follows: 50% to Plaintiff’s nominee Public Citizen Foundation and 50% to Defendants’ nominee
22 Truckers Against Trafficking (TAT). (SA, ¶ 4.4.3.) When the Court preliminarily approved this *cy pres*
23 proposal on December 6, 2022, the Court requested for the Class to be notified of the proposed *cy pres*
24 recipients in the Class Notice; this was done as follows in the Notice which went out to Class Members:

25 E. Need to Promptly Cash Payment Checks. The front of every check issued for
26 Individual Class Payments and Individual PAGA Payments will show the date when
27 the check expires (the void date). If you don’t cash it by the void date, your check
28 will be automatically cancelled, and the monies will be irrevocably lost to you because
they will be paid to the following proposed non-profit organization and foundations:
Public Citizen Foundation and Truckers Against Trafficking (“Cy Pres”).

29 (Kline Decl., Ex. A, ¶ 3.E; Kick Decl., ¶ 25.) The Class was successfully notified of this, with a 99.1%

1 deliverable rate, and no objections were received. (Kline Decl., ¶ 12.) The Court also requested that
2 declarations from the *cy pres* nominees be filed with the motion for final approval. As a result,
3 concurrently filed with this motion are declarations from Robert Weissman of Public Citizen
4 Foundation (“Weissman Decl.”) and Susan L. Dold of TAT (“Dold Decl.”). As supported by the
5 Weissman Decl., Public Citizen is an organization very substantially involved in the protection of
6 workers’ rights, including wage and hour issues such as those in this case, and *cy pres* distribution to
7 Public Citizen further fulfills the purpose of the underlying causes of action by ensuring the non-
8 reversionary nature of the GSA, which serves to deter the misconduct alleged, and promotes justice for
9 all Californians. (*See also, e.g., In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 722.) (*State*
10 *of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472.) (*See* Weissman Decl., ¶ 3.) Neither
11 Class Counsel nor Plaintiff has any involvement in the governance of the proposed *cy pres* recipients.
12 (Polar Decl., ¶ 9; Kick Decl., ¶ 24.) Regarding TAT, Defense counsel has provided declarations as
13 follows. The Dold Declaration describes TAT’s work combatting human labor trafficking. TAT’s
14 efforts serve to protect trafficked survivors from substandard work conditions, including those alleged.
15 TAT and Defendants have no interests or involvement in each other. (*See* Dold Decl., ¶¶ 2-6; *see also*
16 Button Decl., ¶¶ 2-4.)

17 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

18 On December 9, 2022, Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) received
19 the Court-approved Notice of Class Action Settlement (“Class Notice”). (Kline Decl., ¶ 5.)

20 On January 11, 2023, Defense Counsel provided Simpluris with a mailing list (“Class List”)
21 containing all Class Members’ contact information and dates of employment. The Class List contained
22 data for 693 Class Members. (*Id.*, ¶ 6.) From the Class List, 404 individuals were identified as
23 Aggrieved Employees who performed work for Defendants during the PAGA Period. (*Id.*, ¶ 17.)

24 The mailing addresses contained in the Class List were processed and updated utilizing the
25 National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. (*Id.*, ¶ 7.)

26 On September 2, 2023, Class Notice was mailed to 693 Class Members with addresses
27 contained in the Class List via First Class mail or updated via the NCOA search. (*Id.*, ¶ 8.) A total of
28 fifty-seven (57) Class Notices were returned as undeliverable. (*Id.*, ¶ 9.) Of these, five (5) were returned
29 with forwarding addresses. (*Id.*) Simpluris performed an advanced address search (i.e., skip trace) on

1 all of these addresses and was able to locate forty-six (46) updated addresses. (*Id.*) Simpluris promptly
2 mailed a Class Notice to those updated addresses. (*Id.*) Ultimately, there are six (6) Class Notices that
3 remain undeliverable, resulting in a highly successful delivery rate of 99.1%. (*Id.*)

4 The deadline for Class Members to opt out, submit written objections, or dispute workweeks
5 and/or pay periods was March 20, 2023. (*Id.*, ¶¶ 10-13.) Simpluris received no opt-out requests, no
6 pay period disputes, and no objections to any aspect of the proposed the Settlement. (*Id.*)

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

8 “The trial court has broad discretion to determine whether the settlement is fair.” (*Nordstrom*
9 *Com. Cases* (2010) 186 Cal.App.4th 576, 581.)² The proponent of the settlement has the burden to
10 show that it is fair and reasonable. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)
11 “‘Ultimately, the [trial] court’s determination is nothing more than an ‘amalgam of delicate balancing,
12 gross approximations and rough justice.’” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)
13 A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining;
14 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
15 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*In re Microsoft*
16 *I-V Cases* (2006) 135 Cal.App.4th 706, 723; *7-Eleven Owners for Fair Franchising v. Southland Corp.*
17 (2000) 85 Cal.App.4th 1135, 1146.)

18 The inquiry is not whether the settlement agreement is the best one that class members could
19 have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and
20 reasonable.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55.) A settlement need not obtain 100
21 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. (*Wershba*,
22 *supra*, 91 Cal.App.4th at 251.) Even if the proposed settlement affords relief that is substantially
23 narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement

24
25 ² “It should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,
26 complexity and likely duration of further litigation, the risk of maintaining class action status through
27 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
28 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
29 reaction of the class members to the proposed settlement ... Due regard should be given to what is
otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the
extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,
is fair, reasonable and adequate to all concerned.’” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th
576, 581.)

1 because the public interest may indeed be served by a voluntary settlement in which each side gives
2 ground in the interest of avoiding prolonged litigation. (*Id.*)

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

5 The investigation and discovery conducted in this matter have been adequate to give the
6 Plaintiff and Class Counsel a sound understanding of the merits of their position, Defendants’ defenses,
7 and to evaluate the reasonable value range of the claims of the Class. (Kick Decl., ¶¶ 13-15.) Prior to
8 mediation, Plaintiff received and reviewed hundreds of pages of data and documents, including
9 Defendants’ written policies, Class members’ driving logs, and a detailed sample of its non-exempt
10 employees’ timekeeping and payroll records. (*Id.*) Class Counsel conducted significant investigation
11 into the claims and estimates by retaining an expert specializing in wage and hour damages calculation,
12 Berger Consulting, to analyze this data, and the analysis was used as a damages model for the
13 mediation. (*Id.*) Based on the information gathered, and with the assistance of Plaintiff’s experts, Class
14 Counsel estimated the recovery the Class could potentially obtain if Plaintiff were to prevail. (*Id.*)

15 The Settlement was reached as a result of a private mediation with experienced mediator,
16 Alan R. Berkowitz, on April 28, 2022. (*Id.*, ¶ 16.) With the assistance of Mr. Berkowitz, the Parties
17 reached a settlement in principle. Following that successful mediation, a long form agreement was
18 drafted and executed by counsel, who have extensive skill and experience litigating and settling similar
19 wage and hour class actions. (*Id.*) Negotiations during and prior to reaching the Settlement were
20 intensive, non-collusive, and conducted at arm’s length. (*Id.*) Plaintiff and Class Counsel vigorously
21 prosecuted this case, and Defendants vigorously contested liability. (*Id.*, ¶¶ 14-16, 26-27.) The Parties
22 engaged in sufficient investigation and discovery to assess the relative merits of Plaintiff’s claims and
23 of Defendant’s defenses to them. (*Id.*)

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

26 Defendants have vigorously asserted multiple defenses. Defendants argue that Button
27 Transportation, Inc., a California corporation, cannot be liable because it had no employment
28 relationship with Plaintiff. (*Id.*, ¶¶ 14-16, 26-27.) If Defendants were to prevail on the merits of this
29 threshold defense, Plaintiff would lose the only California defendant. (*Id.*) Defendants also contended

1 that Plaintiff's claims for meal and rest periods are entirely preempted by the Federal Motor Carrier
2 Safety Administration ("FMCSA"), and Defendants point to 49 U.S.C. 5125 with respect to drivers
3 subject to FMCSA HOS regulations. (*Id.*) Plaintiff acknowledges that it is very possible that the Court
4 (or a subsequent appellate court) would find these claims preempted. (*Id.*) Defendants could also argue
5 Plaintiff's claims for wage statement and waiting time penalties claims are entirely derivative of
6 Plaintiff's rest period and wage claims, and therefore suffered from not only the same litigation risks
7 as the rest break claims, but also additional risks unique to these claims. (*Id.*)

8 Further, Plaintiff also faced the risk Defendants could successfully argue that their piece-rate
9 compensation scheme was lawful under the California Supreme Court's decision in *Oman v. DeltaAir*
10 *Lines, Inc.* (2020) 9 Cal.5th 762, which permitted translating contractual compensation for tasks into
11 an average hourly rate to meet minimum wage. (*Id.*; *See, e.g., Ayala v. US Xpress*, 851 Fed.Appx. 53
12 (9th Cir. 2021) (applying the *Oman* decision to compensation of truck drivers on a piece-rate basis).)

13 Additionally, Defendants contended that individualized questions of fact predominate over any
14 common issues, and these issues would pose challenges to certification. (*Id.*, ¶ 30.) Defendants would
15 have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide
16 adjudication. Additionally, preparation for trial would have been expensive for all Parties. (*Id.*)

17 To succeed on the merits, Plaintiff would have to prove that Defendants actually engaged in the
18 practices and policies alleged and that those practices and policies violated the law. While Class
19 Counsel believe strong evidence exists showing Defendants' liability, there remains a risk that the trier
20 of fact might find otherwise. (*Id.*, ¶ 32.) If the case were to proceed to trial, additional discovery would
21 be needed and the Parties would thus incur significant additional expenses, which money could go
22 instead to fund a settlement for the benefit of the Class as a whole. (*Id.*) Moreover, discovery disputes
23 would have certainly arisen, which would have cost the Parties additional time and money. (*Id.*) Further,
24 regardless of which Party prevailed, appellate practice would no doubt ensue, further delaying any
25 possible recovery by Class Members. (*Id.*, ¶ 33.) In other words, both Parties would likely incur
26 substantial attorneys' fees and costs from continued litigation, likely approaching hundreds of
27 thousands of dollars. (*Id.*) In contrast, the Settlement provides real and significant benefits for the Class
28 Members here and now, while avoiding the further expenses, risks, and delay of prolonged litigation
29 with only the possibility of recovery.

1 Along with determining a well-defined community of interest, courts may also evaluate “the
2 probability that each class member will come forward ultimately to prove his or her separate claim to
3 a portion of the total recovery and whether the class approach would actually serve to deter and redress
4 alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Here, if absent Class
5 Members wished to seek individual legal redress from Defendants for their wage and hour claims by
6 filing suit on their own, they could have requested to opt out of the Settlement. None did. (Kline Decl.,
7 ¶ 11.) Moreover, individual litigation arising from similar operative facts unduly burden the courts and
8 may produce inconsistent results, which may be avoided here. The Settlement fund created will deter
9 and redress the wage-and-hour violations that Defendants are alleged to have committed.

10 By granting final approval of the Settlement, the Court can approve a resolution that provides a
11 certain and substantial recovery for Class Members.

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

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

22 Here, the Settlement, which provides for a gross settlement amount of \$800,000.00, is fair,
23 adequate, and reasonable to Class Members. The Settlement was calculated using information and data
24 uncovered through extensive case investigation, formal discovery, expert analysis, and the exchange of
25 information in the context of mediation. (Kick Decl., ¶¶ 13-15.) The Settlement takes into account the
26 potential risks and rewards inherent in any case and, in particular, in this matter. (*Id.*, ¶ 34.) Moreover,
27 considering all of the facts in the cases, the Settlement represents a considerable recovery for a Class
28 of 693 individuals. (*Id.*)

29 As discussed above, Defendants would argue, *inter alia*, that Plaintiff’s meal and rest break

1 claims are entirely preempted by the FMSCA, and Plaintiff has acknowledged it is very possible that
2 the Court would agree. (*Id.*, ¶¶ 27-28.) Defendants would also argue they maintained and implemented
3 a lawful compensation scheme that drivers agreed to and compliant wage and hour policies. (*Id.*)
4 Plaintiff contends otherwise, but faces substantial risk that the Court will disagree. (*Id.*)

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

13 Throughout negotiations, Class Counsel carefully considered the viability of Plaintiff’s claims.
14 (*Id.*, ¶ 15.) The information gathered, including Plaintiff’s expert’s calculations based on analysis of
15 Defendants’ sample of time and pay data, resulted in estimates of Defendants’ exposure and the
16 potential recovery for the putative Class, if Plaintiff were to prevail on all theories of liability at trial.
17 (*Id.*) Had this case gone to trial and Plaintiff prevailed on all legal theories, Defendants’ maximum
18 exposure for underpayment of wages is approximately \$3,969,104, including penalties. (*Id.*, ¶ 26.) This
19 means that the proposed settlement of \$800,000.00 is approximately 20.16% of the total recovery
20 possible for unpaid wages.

21 To accounting for the real litigation risks, strengths, and weaknesses of the case, Plaintiff
22 applied the following discounts: 50% for the risk of Defendants prevailing on preemption, employment
23 relationship, and *Oman* defenses; 35% for the risk of non-certification; 30% discount on penalty claims
24 under *Maldonado*; and, a 50% discount on PAGA claims for the Court’s discretion on reducing
25 penalties and underlying risks. If one applies only the discount for pre-emption and class certification,
26 this reduces the maximum possible damages and penalties to \$1,735,143. If one also applies the PAGA
27 discount arising from the Court’s discretion to award lesser penalties, this further reduces this risk-
28 adjusted number by an additional \$222,592 to \$1,522,551. This total risk-adjusted realistic exposure is
29 without the *Maldonado* reduction. (Kick Decl., ¶ 26.) The negotiated gross settlement amount of

1 \$800,000 thus represents about 55.2% of the realistic valuation of the claims.

2 Courts have determined that settlements are, of course, reasonable even where plaintiffs recover
3 only a portion of their actual losses. *See, e.g., Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118
4 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement amounts
5 to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate.”)
6 Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even—a thousandth of a
7 single percent of the potential recovery.” (*Id.*; *see also Martel v. Valderamma* (C.D. Cal. 2015) 2015
8 U.S. Dist. LEXIS 49830 * 17 (approving a settlement of \$75,000 when potential damages were \$1.2
9 million, or about 6%); *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 453 (approving
10 settlement with vouchers, not cash, potentially worth a maximum of 3% if all possible claims were
11 actually made, or \$391.5 million aggregate voucher potential where the class could have recovered
12 \$13.05 billion); *City of Detroit v. Grinnell Corp.* (S.D.N.Y. 1972) 356 F. Supp. 1380, 1386, *aff'd in*
13 *part, rev'd on other grounds*, (2d Cir. 1974) 495 F.2d 448 (a recovery of 3.2% to 3.7% of the amount
14 sought is “well within the ball park.”)

15 Accordingly, Class Counsel believes that \$800,000.00 represents a victory on multiple theories
16 and commensurate with any potential recovery at trial, had Plaintiff certified a class and then prevailed,
17 which outcome is not certain. (*Id.*, ¶¶34-35.) Given the risks inherent in continuing to litigate, including:
18 1) the possibility of an unfavorable, or less favorable, result at trial, 2) the likely possibility that post-
19 trial motions may similarly result in a less favorable result than at trial, and 3) the possibility of a less
20 favorable result on appeal, with the certainty that the appeal process would be lengthy, the Settlement
21 is a fair, adequate, and reasonable resolution for the Class as a whole. (*Id.*)

22 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis
23 [to warrant approval], particularly if recommended by experienced and competent class counsel.” (*In*
24 *re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418,
25 429-30.) The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement
26 Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is
27 fair, reasonable, and adequate, and in the best interest of the Class Members. (Kick Decl., ¶¶ 34-35.)
28 Although the recommendations of Class Counsel are not conclusive, the Court can properly take the
29 recommendations into account, particularly if Class Counsel appears to be competent, has experience

1 with this type of litigation, and significant discovery and investigation have been completed, as is the
2 case here. (4 *Newberg and Rubenstein on Class Actions* (“Newberg”) (6th ed.) § 13.59.) As such, the
3 Court should grant final approval of the Settlement.

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

5 Class Counsel request an award of attorneys’ fees of one-third of the GSA, meaning \$266,667.
6 Although Plaintiff applies first pursuant to the percentage-of-the-benefit methodology, the lodestar
7 incurred in this case far exceeds the request, and therefore the requested fee also is appropriate under a
8 lodestar analysis, or with a lodestar cross-check, and should be alternatively awarded in that manner.

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

10 California law allows the award of attorneys’ fees in class actions based on the percentage-of-
11 the-fund method. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 486; *Chavez v. Netflix*
12 (2008) 162 Cal.App.4th 43, 63 [“fees based on a percentage of the benefits are in fact appropriate in
13 large class actions when the benefit per class member is relatively low”]; *Wershba v. Apple Computer,*
14 *Inc.* (2001) 91 Cal.App.4th 224, 255; *Consumer Cause v. Mrs. Gooch's Natural Food Markets* (2005)
15 127 Cal.App.4th 387, 397 [the common fund doctrine is “frequently applied in class actions when the
16 efforts of the attorney for the named class representatives produce monetary benefits for the entire
17 class”].) There is substantial authority for determining the fee award based on a percentage of the total
18 value of the recovery. The requested fees fall well within an appropriate range under the common fund
19 approach as it is common to award attorney’s fees to class counsel of one-third (33-1/3%) of the
20 settlement amount or higher. (*Chavez, at 66*: “[e]mpirical studies show that, regardless whether the
21 percentage method or the lodestar method is used, fee awards in class actions average around one-third
22 of the recovery.”)

23 In *Laffitte*, the Supreme Court of California, in a case involving an objection to a one-third
24 percentage based recovery in a \$19 million employment class action lawsuit, stated: “We hold further
25 that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee ... [and] also
26 retain the discretion to forego a lodestar cross-check and use other means to evaluate the reasonableness
27 of a requested percentage fee.” (*Laffitte*, 1 Cal.5th at 506, emphasis added.) Several courts have
28 expressed frustration with the alternative “lodestar” approach, which usually involves wading through
29 voluminous and often indecipherable time records. (See, e.g., *In re Activision Securities Litigation*

(N.D. Cal. 1989) 723 F.Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it provides predictability to class counsel and class members; (2) encourages efficient resolution by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial records. (*Id.*, at 1378-79.) In fact, “[a] task force commissioned by the Third Circuit concluded that the lodestar approach... is a cumbersome, enervating, and often surrealistic process of preparing and evaluating fee petitions that now plagues the Bench and Bar and recommended a return to the percentage of the recovery fee formula in cases involving a settlement fund.” (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28, citations and quotation marks omitted.) In *Lealao*, the Court of Appeal considered counsel’s efficiency and skill in bringing the case to an early resolution.

[T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of the class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar methodology. Considering that our Supreme Court has placed an extraordinarily high value on settlement . . . it would seem counsel should be ***rewarded, not punished***, for helping to achieve that goal....

(*Id.*, at 52, citations omitted, emphasis added.) Newberg notes that the percentage methodology aligns class counsel’s interests with those of the class, rewards efficiency, and thus, decreases the social costs of litigation. (5 Newberg, § 15:65 (6th ed.) Courts should not only consider the size of the class or the amount of the recovery; courts should also examine the size of the individual settlement amount of each class member as an indication of counsel’s contribution to the case. (*Lealao*, 82 Cal.App.4th at 53.)

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

B. Analysis Pursuant to the Lodestar Methodology.

Regarding the lodestar methodology, a lodestar figure is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 254.) A lodestar amount may be increased by a multiplier. (*Serrano*, 20 Cal.3d at 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407.) “Multipliers can range from 2 to 4 or even higher.” (*Wershba*, at 255.) Class Counsel’s lodestar totals \$350,595 after voluntary deductions based on business judgment, but will be restricting their fee request to \$266,667 or one-third of the GSA.

(Kick Decl., ¶¶ 6-8.)³ In other words, although this is the sort of case which would certainly merit a “positive multiplier” on the lodestar, nonetheless, if this Court grants the fee request made by Class Counsel, Class Counsel will be receiving a “negative multiplier.”

There is a strong presumption that the lodestar represents a reasonable fee. (*See Perdue v. Kenny A. ex rel. Winn* (2010) 559 U.S. 542, 543 [130 S.Ct. 1662, 1667, 176 L.Ed.2d 494] (citing *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565, 106 S.Ct. 3088, 92 L.Ed.2d 439, 564)). Furthermore, Courts have noted that a percentage fee that falls below counsel’s lodestar supports the reasonableness of the award. (*See, e.g., In re Portal Software, Inc. Sec. Litig.*, No. C- 03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (“negative multiplier suggests that the percentage-based amount is reasonable and fair”); *In re Amgen Inc. Sec. Litig.*, Case No. CV 07-2536 PSG (PLAx), 2016 WL 10571773, at *9 (C.D. Cal. Oct 25, 2016) (same).) Moreover, a negative multiplier, like the negative multiplier here, means that Plaintiff’s Counsel is seeking to be paid “for only a portion of the hours that they expended on the action.” (*Amgen*, at *9.)

The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). “[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’ reputation and status.” (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The trial court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.” (*Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.) The current prevailing billing or “market” rates in the Los Angeles and the Southern California area range from over \$300.00 to over \$1,000.00 per hour.⁴ As can be seen in the Kick Declaration at Paragraph 5, the

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

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

1 rate sought here has been approved by numerous courts across the country, including in this Los
2 Angeles County Complex Court. (Kick Decl., ¶ 5.) Further, the rates are well within the range of rates
3 awarded in class action litigation in California. (*In re Toyota Motor* (C.D. Cal. 2013) 2013 U.S.
4 Dist.Lexis 123298 [approving rate of \$950]; *Banas v. Volcano Corp.* (N.D. Cal. 2014) 47 F.Supp.3d
5 957 [approving 2014 rate of \$1,095; *In re High Tech Emple. Antitrust Litig.*, (N.D. Cal. 2015) 2015
6 U.S. Dist. LEXIS 118052 *33 [approving rates of \$975 an hour].)

7 Trial courts consider the following factors when determining whether to apply a multiplier: “(1)
8 the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the
9 extent to which the nature of the litigation precluded other employment by the attorneys, (4) the
10 contingent nature of the fee award.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, citations
11 omitted.) All of these factors are discussed not only above, but also in the concurrently filed Kick
12 Declaration. (Kick Decl., ¶¶ 13-16, 20, 26-28.) In California, “[m]ultipliers can range from two to four
13 or even higher” and are routinely applied. (*Wershba*, 91 Cal.App.4th at 254.)⁵ The goal is “to entice
14 competent counsel to undertake difficult public interest cases.” (*San Bernardino Valley Audubon Soc.*
15 *v. County of San Bernardino* (1985) 155 Cal.App.3d 738, 755.) Fee awards that are too small “chill the
16 private enforcement essential to the vindication of many rights[.]” (*Lealao*, 82 Cal.App.4th at 53.)

17 If for whatever reason the Court were inclined to use a percentage lower than one-third, Class
18 Counsel respectfully request an increased multiplier to allow the awarded attorneys’ fees to arrive at
19 \$266,667. Although there are a number of valid reasons for a multiplier in this case, one is the
20 contingent risk as explained by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal.4th
21 1122, 1133: “A lawyer who both bears the risk of not being paid and provides legal services is not
22 receiving the fair market value of his work if he is paid only for the second of these functions.”

23 Finally, Class Counsel have significant time and resources on this case, which could have been
24 directed towards other cases. (Kick Decl., ¶¶ 6-8, 20.)

25 _____
26 of \$515/per hour for associates to \$1,220/per hour for partners. (*Id.*, at ¶ 4.) The majority of the rates for partners
27 were between \$700 and \$1000 per hour. (*Ibid.*)

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

1 Class Counsel seek reimbursement of necessary litigation costs in the amount of \$9,811.49,
2 which is the amount that has been advanced on behalf of the class members to date and is less than the
3 amount represented in the notice to Class Members as “up to \$25,000.” (*Id.*, ¶ 19, Ex. 1, SA.) These
4 costs include already incurred costs of filing fees, the fees for expert consultants Berger Consulting
5 who analyzed the data produced by Defendants, legal research, mediation fees, and others. (*Id.*)

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

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

14 The criteria courts may consider in determining whether to make an incentive award
15 include: 1) the risk to the class representative in commencing suit, both financial and
16 otherwise; 2) the notoriety and personal difficulties encountered by the class
17 representative; 3) the amount of time and effort spent by the class representative; 4) the
18 duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the
19 class representative as a result of the litigation. [Citations.] (*Ibid.*)

20 Here, the Court appointed Plaintiff Julio C. Polar as Class Representative and approved
21 notifying the Class of Plaintiff’s request for a Class Representative Service Award of \$10,000.00.
22 (Preliminary Approval Order, ¶¶ 2, 8.) As mentioned, no objections were received. (Kline Decl., ¶ 12.)
23 Mr. Polar’s requested Service Award is fair and appropriate given: (1) the substantial time and effort
24 he expended; (2) the risks he faced and continues to face as a result of bringing the Action; (3) the fact
25 he put Class Members’ interests ahead of his own; and (4) the substantial benefit conferred upon the
26 Class. (Kick Decl., ¶ 23; Polar Decl., ¶¶ 5-8.) Mr. Polar spent a substantial amount of time and effort
27 in producing relevant documents and past employment records and providing the facts and evidence
28 necessary to attempt to prove the allegations. (Kick Decl., ¶ 23; Polar Decl., ¶¶ 7-8.) Mr. Polar assisted
29 actively in the investigation of the claims alleged, conferred regularly with counsel, aided in preparation
for and set time aside to be available the entire day of mediation, and provided all information requested
by counsel to benefit the Class. (*Id.*) This is all in addition to the reputational and career risks that Mr.
Polar believes he has already experienced since bringing this lawsuit, as described in his declaration.

(Polar Decl., ¶ 6.) Accordingly, it is appropriate and just for Plaintiff to receive a Service Award for his services on behalf of the Class, in addition to his individual payment as a class member.

VIII. REASONABLE SETTLEMENT ADMINISTRATION COSTS TO BE APPROVED

As set forth in the accompanying Declaration of Lindsay Kline from Simpluris, Inc., the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process is \$9,972.00. (Kline Decl., ¶ 18.) The costs incurred and to be incurred include, but are not limited to, expenses for printing and mailing the Notice of Class Action Settlement to Class Members; establishing and maintaining a means to receive and validate opt out requests, objections, or disputes of pay periods submitted by Class Members, including a toll-free telephone number; establishing and maintaining a settlement fund account; processing and mailing payments to the Plaintiff, Class Counsel and Class Members; calculating employer-side taxes and providing appropriate forms and calculations to Defendants; and mailing settlement checks; among other things. (*Id.*, ¶¶ 3-4.) Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$9,972.00.

IX. THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

In granting preliminary approval, this Court already determined that the proposed settlement class fulfills all the criteria of California Code of Civil Procedure section 382, and applicable case law, and is appropriate for certification. None of these factors have changed.

Numerosity is readily satisfied because there are 693 members in the settlement Class. *See, Vasquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971). (Kline Decl., ¶ 8.) Common questions of law and fact predominate because all Class Members were subject to a common policies and practices and paid according to uniform formulae. *See Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Wash. Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001)). Typicality and adequacy of representation are also satisfied as Plaintiff was also subject to the same compensation and employment policies and practices. *See* 7 Newberg § 23:23 (6th ed.). (Polar Decl., ¶ 5.) Plaintiff's interests are essentially identical, if not exactly identical, to those of the Class and there is no conflict between Plaintiff or his counsel, on the one hand, and any other Class Member. *See Richmond v. Dart Industries*, 29 Cal.App.3d 462, 470 (1981). (Kick Decl., ¶ 23; Polar Decl., ¶¶ 4-7.)

The requirement of ascertainability already has been met as notice was successfully

1 accomplished to the Class Members as ordered by the Court. Last, in this matter, where global
2 resolution is achieved for 693 Class Members whose claims which would otherwise be too small to
3 warrant individual litigation, a class action is demonstrably superior to other methods of adjudication.
4 *Richmond, supra*, 29 Cal.3d 462, 469. (Kline Decl., ¶ 8.)

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

6 **X. CONCLUSION**

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

9 DATED: May 8, 2023

Respectfully submitted,
THE KICK LAW FIRM, APC

11 By: /s/ Greg Taylor
12 Taras Kick
13 Greg Taylor
14 Attorneys for Plaintiff Julio C. Polar and
the Class

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I, the undersigned, certify and declare that I am over the age of 18 years, employed in the
4 County of Los Angeles, State of California, and not a party to the above-entitled cause. My business
address is The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049.

5 On the below executed date, I served the document(s) described as:

- 6 • **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL**
7 **APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;**
8 • **DECLARATION OF TARAS KICK IN SUPPORT OF UNOPPOSED MOTION FOR**
9 **FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;**
10 • **DECLARATION OF JULIO C. POLAR IN SUPPORT OF UNOPPOSED MOTION**
11 **FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;**
12 • **DECLARATION OF LINDSAY KLINE REGARDING NOTICE AND**
13 **SETTLEMENT ADMINISTRATION;**
14 • **DECLARATION OF ROBERT WEISSMAN OF PUBLIC CITIZEN FOUNDATION;**
15 • **DECLARATION OF SUSAN L. DOLD REGARDING CY PRES RECIPIENT; AND**
16 • **DECLARATION OF ROBERT L. BUTTON REGARDING CY PRES RECIPIENT.**

13 on the interested parties in this action by sending a true copy thereof to interested parties as
14 follows:

15 **Attorneys for Defendants**

16 **BUTTON TRANSPORTATION, INC., BUTTON TRANSPORTATION, LLC (LA), BUTTON**
17 **TRANSPORTATION, LLC (FL), and ROBERT L. BUTTON**

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22 **[X] BY E-SERVICE: By electronic service (via electronic filing service provider).** I caused the
23 documents to be electronically transmitted to Case Anywhere, an electronic filing service provider, at
24 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.

25 I declare under the penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct.

27 Executed on May 8, 2023, in Los Angeles, California.

28 /s/ Alina Muresan
Alina Muresan