

1 Joseph Lavi, Esq. (SBN 209776)
2 jlavi@lelawfirm.com
3 Vincent C. Granberry, Esq. (SBN 276483)
4 vgranberry@lelawfirm.com
5 Melissa A. Huether, Esq. (SBN 316604)
6 mhuether@lelawfirm.com
7 Pooja V. Patel, Esq. (SBN 317891)
8 ppatel@lelawfirm.com
9 **LAVI & EBRAHIMIAN, LLP**
10 8889 W. Olympic Blvd., Suite 200
11 Beverly Hills, California 90211
12 Telephone: (310) 432-0000
13 Facsimile: (310) 432-0001

14 Attorneys for Plaintiff MARTIN NOLASCO
15 on behalf of himself and similarly situated Component/Piece Rate Drivers.

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

18 MARTIN NOLASCO, on behalf of himself
19 and others similarly situated,

20 Plaintiff,

21 vs.

22 MOHAWK INDUSTRIES, INC, and
23 MOHAWK ESV, INC.; and DOES 1 to 100,
24 inclusive,

25 Defendants.

Case No.: CIVSB2106866

CLASS ACTION

[Assigned for all purposes to the Hon. David S. Cohn, Dept. S26]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with the Declaration of
Melissa A. Huether in Support; Declaration of
Martin Nolasco; and [Proposed] Order]*

Hearing Information:

Date: January 9, 2023

Time: 10:00 a.m.

Dept.: S26

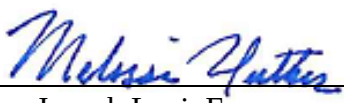
1 **TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE**
2 **ATTORNEYS OF RECORD:**

3 **NOTICE IS HEREBY GIVEN** that on January 9, 2023, at 10:00 a.m., or as soon thereafter
4 as the matter can be heard in Department S26 of the San Bernardino County Superior Court located
5 at 247 West Third St., San Bernardino, California 92415, Plaintiff Martin Nolasco (“Plaintiff”) will
6 move for an order granting preliminary approval of the proposed class action settlement on the
7 terms and conditions set forth in the Stipulation of Class Action and PAGA Settlement
8 (“Stipulation” or “Settlement” or “Agreement”) between Plaintiff and Defendant Mohawk ESV,
9 Inc. (“Defendant”), a copy of which is attached to the Declaration of Melissa A. Huether (“Huether
10 Decl.”) as **Exhibit “1.”** Plaintiff will further move that the Order specifically encompass the
11 following:

- 12 1. Certify a class for settlement purposes only;
- 13 2. Appoint the Plaintiff as Class Representative for settlement purposes only;
- 14 3. Appoint Joseph Lavi, Esq., Vincent C. Granberry, Esq., Pooja V. Patel, Esq., and
15 Melissa A. Huether, Esq., of Lavi & Ebrahimian, LLP as Class Counsel;
- 16 4. Approve the Notice of Proposed Class Action Settlement and Final Approval
17 Hearing in the form attached as **Exhibit “A”** to the Settlement;
- 18 5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately
19 120 days after the Court grants preliminary approval of the Settlement.

20
21 Dated: December 14, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

22
23 By: 
24 Joseph Lavi, Esq.
25 Vincent C. Granberry, Esq.
26 Melissa A. Huether, Esq.
27 Attorneys for Plaintiff Martin Nolasco and
28 on behalf of himself and similarly situated
Component/Piece Rate Drivers

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Martin Nolasco (“Plaintiff”) respectfully submits this memorandum of points and
4 authorities in support of his motion for preliminary approval of the proposed class action settlement
5 with Defendant Mohawk ESV, Inc. (“Defendant”) (Plaintiff and Defendant are collectively
6 hereinafter referred to as “the Parties”). Plaintiff seeks entry of a proposed order granting
7 preliminary approval of the class settlement which: (1) preliminarily approves the proposed
8 settlement of the class action; (2) approves the form and method for providing notice and directs
9 that notice be given to members of the settlement class; (3) preliminarily certifies the settlement
10 class for settlement purpose; and (4) schedules a final approval hearing date.

11 As consideration for this Settlement, Defendant shall pay a sum equal to Three Hundred
12 Thousand Dollars (\$300,000.00) (the “Settlement Amount”) to fund the non-reversionary, no claims
13 made settlement of this class action. (Stipulation of Class Action and PAGA Settlement
14 (“Settlement” or “Stipulation”), § 28 attached as **Exhibit “1”** to Declaration of Melissa A. Huether
15 (“Huether Decl.”). The Settlement Amount is inclusive of settlement payments to Settlement Class
16 Members, all Class Counsel’s Fees Award, Class Counsel’s Cost Award, the Service Award to
17 Plaintiff for his services as class representative, PAGA Allocation, and Settlement Administration
18 Costs as provided by this Settlement. (*Id.*)

19 **II. SUMMARY OF LITIGATION**

20 **A. The Parties**

21 The named Plaintiff worked as a piece rate driver of Defendant and seeks to represent
22 approximately 65 current and former component/piece rate drivers who worked for Defendant
23 Mohawk ESV, Inc. in the State of California any time from January 9, 2021, through September 18,
24 2022 (hereinafter “Class” or “Class Members”). (Huether Dec., ¶ 3.)

25 **B. The Complaint and Allegations**

26 This is a proposed employee wage and hour class action case. On February 26, 2021, Plaintiff
27 filed his class action complaint in the San Bernardino County Superior Court as Case No.
28 CIVDS2106866: (1) failure to pay minimum wages; (2) failure to indemnify/reimburse expenses;

1 (3) failure to provide accurate wage statements; (4) failure to timely pay wages upon separation of
2 employment; and (5) violations for Business & Professions Code Sections 17200, et seq. (Huether
3 Decl. ¶4.)

4 On May 4, 2021, Plaintiff filed a representative PAGA action in the San Bernardino County
5 Superior Court, Case No. CIVDS2113778 (“PAGA Action”). (Huether Decl. ¶5.)

6 On July 19, 2022, Plaintiff and Defendant participated in a private mediation session with
7 well-respected wage and hour class action mediator, Hon. Carl J. West (Ret.). As a result of the
8 mediation, the Parties reached the Settlement described herein of this Action and PAGA Action.
9 (Huether Decl. ¶6.)

10 On November 21, 2022, pursuant to the terms of the Settlement, Plaintiff filed a First
11 Amended Complaint which added Plaintiff’s PAGA claim as alleged in the PAGA Action to this
12 Action for purposes of Settlement. (Huether Decl. ¶7.)

13 Defendant’s defenses to Plaintiff’s claims were as follows: Defendant contends that with
14 respect to Class Members minimum wages claim, Defendant paid all wages which were due and
15 owing and maintained compliant policies. Defendant contended it properly paid drivers on a piece
16 rate basis and drivers were not required to engage in non-productive activities. Further, Defendant
17 would likely argue there is no minimum wage violation as piece rate drivers’ average hourly rate is
18 well over the minimum wage rate even if they spent significant time doing pre and post shift off the
19 clock work. With respect to Plaintiff’s business expenses claim, Defendant argued that there was no
20 mandate or requirement that Plaintiff and other drivers were required to use their personal cell
21 phones. Defendant would likely contend that if a class member did use their personal cell phone for
22 work purposes, it was their choice and not at the direction of Defendant. Additionally, while
23 Defendant could contend any alleged wage statement violations could not be shown to be
24 “knowing and intentional” given its good-faith defenses, and that Plaintiff cannot show he or
25 other employees “suffer[ed] injury,” as required by Labor Code § 226(e). Defendant would likely
26 argue that wage statements always accurately reflected hours worked and amounts paid to
27 employees. Defendant also could argue that wage statement penalties are not recoverable at all for
28 alleged meal and rest period violations. Given Defendant’s anticipated arguments that no

violations occurred, that Class Members suffered no “injury,” that any alleged violations were not “knowing and intentional,” and that meal and rest period claims cannot support wage statement penalties. Based on the foregoing, Defendant concluded, Plaintiff and Class Members were paid out upon separation of employment for all wages owed, and that Defendant believed, in good faith, that it was properly paying all wages to separating employees. In other words, Defendant concluded, Plaintiff would not be able to establish the willful elements of their Labor Code sections 226 or 203 claims. For these reasons, Defendant concluded, Plaintiff would not likely prevail on their claims. (Huether Decl. ¶15.)

C. The Exchange of Detailed Informal Discovery and Legal Analysis by the Parties’ Counsel

As described above, the Parties participated in a full day mediation session with the Hon. Carl J. West (Ret.), a highly experienced and well-regarded class action mediator. As a critical part of settlement negotiations, the Parties engaged in extensive informal discovery exchange which included following information for piece rate drivers: the number of class members, number of workweeks, average hourly rate, amount of reimbursements Defendant has paid, and number of aggrieved employees. Plaintiff’s counsel also reviewed Plaintiff’s time and wage records and the settlement documents filed in regard to a prior filed class action. (Huether Decl. ¶7.)

Counsel for the Parties have investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by Plaintiff, and multiple conference calls and email exchanges between Plaintiff’s counsel and Defendant’s counsel. (Huether Decl. ¶¶7-9.)

Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. (*Id.*) Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. (*Id.*) Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant’s compelling defenses thereto, and the difficulties in establishing damages for the Class Members. (*Id.*) Based on the foregoing, Plaintiff and Class

Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Actions and further denies that the Class Action is appropriate for class treatment for any purpose other than this Settlement. (Settlement, ¶ 35.) Defendant contends, among other things, that it has always complied with the California Labor Code and the California Business and Professions Code. (*Id.*)

III. THE SETTLEMENT

The settlement contemplates (i) entry of an Order preliminarily approving the settlement and approving certification of a provisional settlement class, contingent upon final approval of the settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Stipulation, a copy of which is attached to the Declaration of Melissa A. Huether as **Exhibit “1.”** A summary of the key terms of the Settlement is as follows:

1. “Class Member(s)” shall include and mean Plaintiff Martin Nolasco and all current and former component/piece rate drivers who worked for Defendant Mohawk ESV, Inc. in the State of California any time from January 9, 2021, through September 18, 2022. (Settlement, § 5.)
2. “Settlement Period” means the time period from January 9, 2021, through September 18, 2022. (Stipulation, § 32.)
3. “Settlement Amount” means Three Hundred Thousand Dollars and Zero Cents (\$300,000.00), which is the total amount available for distribution that Defendant has agreed to pay according to the terms of this Stipulation of Settlement. (Settlement, § 28.)
4. “Distribution Fund” means the amount of money to be distributed to Class Members, which is the difference between the Settlement Amount and the sum of: (1) Class Counsel’s Fees Award; (2) Class Counsel’s Cost Award; (3) Plaintiff’s Service Award; (4) Settlement Administration Costs; and (5) seventy-five percent (75%) of the PAGA Allocation. (Settlement, § 11.)

5. Settlement Payments will be distributed to Settlement Class Members on a pro rata basis based on weeks worked by Settlement Class Members during the Settlement Period. More specifically, the Distribution Fund will be divided by the total number of weeks worked by Settlement Class Members for Defendant in California during the Settlement Period to ascertain a value per workweek. The value per workweek will then be multiplied by the number of weeks worked during the Settlement Period by each Settlement Class Member. (Settlement, § 40.d.)
6. Settlement Payments to Settlement Class Members will be allocated as follows: 25% to wages for which an IRS Form W-2 shall issue and 75% to reimbursement, penalties and interest for which an IRS Form 1099 shall issue. (Settlement, § 40.c.)
7. Settlement Payment checks issued to Settlement Class Members from the Distribution Fund shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and will thereafter automatically be canceled if not cashed by the Check Stale Date. Any funds associated with uncashed checks in the Net Settlement Amount shall be distributed pursuant to the State Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, et seq for the benefit of those Settlement Class Members who did not cash their checks. (Settlement, § 56.)
8. As of the date Defendant funds the Settlement Amount, the Named Plaintiff and all Settlement Class Members will be deemed to fully and irrevocably release and discharge the Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, related to or that reasonably could have arisen out of the same facts alleged in the Complaint, including claims under Labor Code sections 201, 202, 203, 204, 210, 226, 226.2, 1194, 1197, 1194.2, 2802 as well as IWC Wage Order No. 9 section 4 and the California Business and Professions Code based on the foregoing, as well as any civil penalty claims predicated on the claims alleged in the Complaint under the California Labor Code Private Attorneys General Act ("PAGA") ("Released Claims"). (Settlement, § 23 & 41)
9. The Parties have agreed to retain Phoenix Class Action Administration Solutions to perform the customary duties of Settlement Administrator (the "Settlement Administrator"). (Settlement, § 26.)
10. Class Counsel may apply for a Fees Award in an amount not to exceed one-third of the Settlement Amount or One Hundred Thousand Dollars and Zero Cents (\$100,000.00), which represents all past and future attorneys' fees incurred in the Actions by all attorneys working on behalf of the Named Plaintiff and Class Members. Additionally, Class Counsel may apply for a Costs Award in an amount not to exceed Twenty Five Thousand Dollars and Zero Cents (\$25,000.00), which represents all past and future attorneys' costs and expenses necessary to prosecute, settle and administer the Actions and this Settlement. (Settlement, § 40.k.)

11. The Service Award to be paid to Plaintiff will be awarded by the Court in its discretion for his service as class representative and as consideration for his general release of claims but shall not exceed a total of Eight Thousand Nine Hundred Dollars and Zero Cents (\$8,900.00) in the aggregate. Defendant shall not oppose Plaintiff's request for a Service Award in the amount described herein. (Settlement, § 40.i.)
12. Class Members have sixty (60) calendar days after the Settlement Administrator has postmarked the Class Notice for mailing to Settlement lass Members to postmark and return requests for exclusion, objections, or challenges to workweeks ("Response Deadline"). (Settlement, § 18.)
13. Class Members who wish to request exclusion from the Settlement must do so in writing by the Objection/Exclusion Deadline. To be valid, any request for exclusion must: (1) be in writing and postmarked for service by mail to the Settlement Administrator no later than the Objection/Exclusion Deadline; (2) contain the full name, address, telephone number, and last four digits of the Social Security number of the Class Member objecting to the Settlement, which must match up with the social security number and either first or last name in Defendant's records; (3) have a signature and date; and (4) state "I wish to be excluded from the Settlement in *Martin Nolasco et al. v. Mohawk ESV, Inc. et al.*, San Bernardino County Superior Court, Case No. CIVSB2106866. I understand that in asking to be excluded from the Settlement class, I will not receive any money as part of the Settlement approved by the Court.". (Settlement, § 51.)
14. Class Members may also object to the Settlement in writing before the Objection/Exclusion Deadline. To be valid, all written objections, supporting papers and/or notices of intent to appear at the final approval hearing must: (1) clearly identify the Class Action by name and case number (*Martin Nolasco et al. v. Mohawk ESV, Inc. et al.*, Case No. CIVSB2106866); (2) contain the full name, address, telephone number, and last four digits of the Social Security number of the Class Member objecting to the Settlement, which must match up with the social security number and either first or last name in Defendant's records; (3) have a signature and date; and (4) be postmarked for service by mail and sent to the Settlement Administrator no later than the Objection/Exclusion Deadline. Settlement Class Members who fail to file and serve timely written objections or, if the Court permits, orally make an objection at the Final Approval Hearing, in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. (Settlement, § 50.)

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1 **IV. ANALYSIS**

2 **A. Class Action Settlements Are Subject To Review And Approval Under The**
3 **California Rules of Court**

4 Rule 3.769 of the California Rules of Court requires court approval for class action
5 settlements. “Before final approval, the court must conduct an inquiry into the fairness of the
6 proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in
7 approving settlements which are fair, not collusive, and take into account “all the normal perils of
8 litigation as well as the additional uncertainties inherent in complex class actions.” (*In re Beef*
9 *Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef*
10 *Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

11 **B. This Settlement Is Fair, Reasonable, And Adequate**

12 The purpose of the preliminary evaluation of class action settlements is to determine only
13 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether
14 notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*
15 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.)
16 Courts have broad powers to determine whether a proposed settlement is fair under the
17 circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court*
18 (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several
19 relevant factors, including “the strength of the Plaintiffs’ case, the risk, expense, complexity and
20 likely duration of further litigation, the risk of maintaining class action status through trial, the
21 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
22 [and] the experience and views of counsel...” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
23 1794, 1801.) “The list of factors is not exclusive and the court is free to engage in a balancing and
24 weighing of the factors depending on the circumstances of each case.” (*Wershba, supra*, 91
25 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual
26 decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual
27 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
28 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or

1 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
2 reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
3 1011, 1027.)

4 A proposed class action settlement is presumed fair under the following circumstances: (1)
5 the parties reached settlement after arms-length negotiations; (2) investigation and discovery were
6 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
7 litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48
8 Cal.App.4th at 1802.) The Declaration of Class Counsel Melissa A. Huether demonstrates that the
9 proposed settlement was the product of serious, informed, and non-collusive negotiations and
10 demonstrates counsel’s extensive experience in both employment law as well as class action
11 litigation.

12 **1. The Settlement is the result of serious, informed, and non-collusive**
13 **negotiations.**

14 The Settlement was reached as a result of arm’s-length negotiations facilitated by a highly
15 regarded and experienced wage and hour mediator, Hon. Carl J. West (Ret.) and analysis by
16 Plaintiff’s counsel. (Huether Decl. ¶¶7-19.) While Plaintiff believes in the merits of his case, he
17 also recognizes the inherent risks of litigation and understands the benefit of the Settlement Class
18 receiving settlement funds immediately as opposed to risking an unfavorable decision on class
19 certification, summary judgment, at trial and/or the damages awarded, and/or on an appeal that can
20 take several more years to litigate. (*Id.*)

21 **2. The extent of the information provided through informal discovery and the**
22 **stage of the proceedings support the Settlement.**

23 As described herein, the Parties investigated and evaluated the factual strengths and
24 weaknesses of this case before reaching the proposed Settlement and engaged in sufficient
25 investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the
26 proposed Settlement was reached following probative factual evaluation of the extensive informal
27 discovery exchange which included following information for piece rate drivers: the number of class
28 members, number of workweeks, average hourly rate, amount of reimbursements Defendant has paid,

1 and number of aggrieved employees. Plaintiff's counsel also reviewed Plaintiff's time and wage
2 records and the settlement documents filed in regard to a prior filed class action. (*Id.*)

3 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth
4 above. This litigation, therefore, has reached the stage where "the Parties certainly have a clear view
5 of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel*
6 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

7 **3. Plaintiff's counsel are experienced in similar litigation.**

8 Experienced counsel, operating at arms-length, have weighed the strengths of the case and
9 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of
10 the attorneys actively conducting the litigation "is entitled to significant weight" in deciding
11 whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)
12 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.*
13 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, *supra*, 485 F.Supp. at 617.)

14 Both Plaintiff's and Defendant's counsel are experienced in employment, wage and hour
15 and class action matters. Lavi & Ebrahimian LLP, is a well-regarded firm that handles almost
16 exclusively employment matters. (Huether Decl. ¶21.) Joseph Lavi, of Lavi & Ebrahimian, LLP,
17 has been approved in class counsel in numerous actions and has been named a Southern California
18 Super Lawyer the area of Plaintiff's employment litigation - class action from 2011-2022. (*Id.*)
19 Defendant's counsel, Ian A. Wright of Alston & Bird LLP are also extremely well-regarded and
20 respected as employment defense counsel. Counsel on both sides share the view – endorsed by an
21 experienced wage and hour class action mediator – that this is a fair and reasonable settlement in
22 light of the complexities of the case, the state of the law and uncertainties of class certification and
23 litigation, and the benefit the settlement confers on the class. (Huether Decl. ¶¶7-19.) Given the
24 risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this
25 settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

26 ///

27 ///

1 **4. The Settlement is fair and reasonable based on the strengths of Plaintiff's**
2 **case and the risks and costs of further litigation**

3 Plaintiff and his counsel have concluded it was reasonable to enter into the proposed
4 Settlement. Defendant has vigorously contested and continue to contest liability for the claims
5 asserted in the action. Although Defendant believes that class certification would be unlikely on
6 such claims, it nevertheless agreed to attempt resolution of the case through extensive informal
7 discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

8 There are significant legal uncertainties associated with cases such as this as they can be
9 factually complex and require protracted litigation to resolve. A settlement is not judged solely
10 against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have
11 to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska*
12 *Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney*
13 *v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and
14 necessary in the settlement process...even if the relief afforded by the proposed settlement is
15 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to
16 a class settlement because the public interest may indeed be served by a voluntary settlement in
17 which each side gives ground in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at
18 250.)

19 **5. The Proposed Settlement is a Reasonable Compromise of Claims**

20 To evaluate a settlement, the trial court must receive “basic information about the nature
21 and magnitude of the claims in question and the basis for concluding that the consideration being
22 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*
23 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit
24 statement of the maximum theoretical recovery:

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

controversy and the realistic ranges of outcomes of the litigation.”

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

Based on the information informally produced by Defendant, during the class period, Defendant employed approximately 65 piece rate drivers (3 of those being former employees) over the course of approximately 4,248 workweeks with an average hourly rate of \$28.22. (Huether Decl. ¶11.) Based on Class Counsel’s analysis of the data and information, the maximum exposure for Plaintiff’s claims were as follows:

With regard to Plaintiff’s Minimum Wage Claim, Plaintiff alleged that Defendant failed to properly compensate Plaintiff and other piece rate drivers for non-productive time as required by California law.¹ Plaintiff contends at a minimum he and other piece rate drivers spent 30 minutes conducting pre trip and post trip truck inspections which were not compensated as non-productive time yet were mandatory. Plaintiff further contends he spent significant time each week engaged in other non-productive time such as participating in meetings, waiting for loads, cleaning his truck and completing paperwork. Plaintiff estimates he spent approximately two hours per week engaged in these other non-productive time activities. Therefore, Plaintiff estimated there were approximately \$539,453.52 in damages for unpaid wages [Calculated as follows: (4,248 workweeks x 5 days a week x 0.5 hours of unpaid time per day x \$28.22 avg. hourly rate = \$299,696.40) + (4,248 workweeks x 2 hours of unpaid time per week x \$28.22 avg. hourly rate = \$239,757.12].

¹ See *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314 (2005) California law requires that employees be paid for “all hours worked” and an employer must separately compensate piece-rate employees for all hours spent performing non-piece rate, i.e., non-productive work); *Quezada v. Con-Way Freight, Inc.*, 2012 WL 2847609, *7 (N.D.Cal. 2012) (“...Defendant’s pay scheme of ‘building in’ compensation for non-driving tasks on a per-mile rate is not permissible under the California Labor Code.”); *Cardenas v. McLane FoodServices, Inc.*, 796 F. Supp. 2d 1246, 1252-53 (C.D.Cal.2013 holding that non-driving activities could only be included in a piece-rate formula if the formula, by its very terms, references the non-driving components in its formulation; otherwise, all non-driving tasks must be paid for separately and hourly, regardless of what the employer intended or what the employees believed was or was not included in the piece-rate); *Bluford v. Safeway Stores, Inc.*, 216 Cal.App.4th 864 (2013) (holding that a piece-rate system of pay is illegal unless it separately pays drivers on an hourly basis for their time spent on rest periods); *Reinhardt v. Gemini Motor Transport* (E.D. Cal. 2012) 869 F.Supp.2d 1158, 1168 (piece-rate pay system that did not separately pay truck drivers for non-driving duties violates California law requiring compensation for each hour worked); *Gonzalez v. Downtown LA Motors*, 215 Cal. App. 4th 36, 40-41 (2013) (citing and adopting the logic of *Cardenas*); *Ridgeway v. Wal-Mart Stores, Inc.*, 2015 WL 3451966 (N.D. Cal. 2015) (granting summary judgment to plaintiffs on their claim that Wal-Mart’s piece rate mileage pay system of compensation applicable to truck drivers violated California law by not having separate and hourly pay for time spent on inspections, fueling, washing, weighing, paperwork and layovers). Specifically, Labor Code section 226.2 states that “employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.” See, California Labor Code section 226.2(a)(1).

(Huether Decl. ¶12.)

With regards to Plaintiff's unreimbursed business expenses claim, Plaintiff alleged that Defendant failed reimburse Plaintiff and other class members for use of their personal cell phone and personal tools for business purposes. Plaintiff assumed that each class members incurred approximately \$40 in expenses related to their employment per month. Therefore, Plaintiff estimated there was a maximum of approximately \$39,242.50 in damages. [Calculated as follows: \$40/month cell phone and tools and data/4.33 weeks per month= \$9.24 per week; \$9.24 x 4,248 workweeks=\$39,242.50]. However, Defendant provided evidence that it provided reimbursement to class members for cell phone and tools in the amount of \$29,198.00 during the relevant time period. Therefore, the realistic damages for Plaintiff's reimbursement claim are \$10,104.50 (calculated as \$39,242.50 - \$29,198.00 = \$10,104.50.) (Huether Decl. ¶13.)

With regard to Plaintiff's Wage Statement claim, the maximum that Plaintiff could recover amounted to approximately \$260,000. [65 employees X \$4,000 maximum penalty = \$260,000.00.] (Huether Decl. ¶14.)

With regard to Plaintiff's Waiting Time penalties claim, the maximum that Plaintiffs could recover amounted to approximately \$20,318.40. [3 former employees X 8 hours per workday X \$28.22/hour average rate of pay X 30 days = \$20,318.40.] (Huether Decl. ¶15.)

With regard to Plaintiff's Timely Wages Claim, the maximum Plaintiff could recover amounted to approximately \$13,000.00. [65 employees x \$200 penalty = \$13,000.] (Huether Decl. ¶16.)

As such, Plaintiff's maximum potential recovery in this matter, excluding PAGA penalties, would amount to approximately \$842,876.42. The settlement reached in this matter was \$300,000 or approximately 36% of maximum potential damages. (Huether Decl. ¶17.)

Regarding the PAGA penalty exposure analysis, according to the data informally produced by Defendant in this case, during the PAGA period (from January 9, 2021 through mediation) there are approximately 65 piece rate drivers over the course of approximately 4,248 pay periods. In this action, because the class period and PAGA period are the same, and because class members are paid weekly, the number of aggrieved employees and class members is the same and the number of

workweeks and pay periods is the same. Based on the data, the maximum exposure for the PAGA claims amounted to approximately \$1,094,050. This amount was calculated based on the PAGA penalty calculation formula - (Initial violation penalty x total number of employees in the one-year PAGA period) + (subsequent violation penalty x [total number of pay periods in the one-year period – total number of employees in the one-year PAGA period]) as follows:

a. Unpaid Minimum Wages: (65 employees X \$100 initial violations = \$6,500) + ([4,248 pay periods – 65 aggrieved employees = 4,183 X \$250/subsequent violations = \$1,045,750) = \$1,052,250. [Penalty Amounts set by Lab. Code, § 1197.1, subds. (a)(1)-(2).]

b. Unreimbursed Business Expenses: (65 employees X \$100 initial violations = \$6,500) + ([4,248 pay periods – 65 aggrieved employees = 4,183 X \$200/subsequent violations = \$836,600) = \$843,100. [Penalty Amounts set by Lab. Code, § 2699, subd. (f)(2).]

c. Wage Statements: 4,248 pay periods X \$250 = \$1,062,000. [Penalty Amounts set by Lab. Code, § 226.3.]

d. Waiting Time Penalties: 65 employees X \$100 initial violations = \$6,500 [Penalty Amounts set by Lab. Code, § 2699, subd. (f)(2).] (Huether Dec. ¶18(a)-(d).)

As noted above, Defendant's defenses to Plaintiff's claims were as follows: Defendant contends that with respect to Class Members minimum wages claim, Defendant paid all wages which were due and owing and maintained compliant policies. Defendant contended it properly paid drivers on a piece rate basis and drivers were not required to engage in non-productive activities. Further, Defendant would likely argue there is no minimum wage violation as piece rate drivers' average hourly rate is well over the minimum wage rate even if they spent significant time doing pre and post shift off the clock work. With respect to Plaintiff's business expenses claim, Defendant argued that there was no mandate or requirement that Plaintiff and other drivers were required to use their personal cell phones. Defendant would likely contend that if a class member did use their personal cell phone for work purposes, it was their choice and not at the direction of Defendant. Additionally, with Defendant could contend any alleged wage statement violations could not be shown to be "knowing and intentional" given its good-faith defenses, and that Plaintiff cannot show he or other employees "suffer[ed] injury," as required by Labor Code §

226(e). Defendant would likely argue that wage statements always accurately reflected hours worked and amounts paid to employees. Defendant also could argue that wage statement penalties are not recoverable at all for alleged meal and rest period violations. Given Defendant’s anticipated arguments that no violations occurred, that Class Members suffered no “injury,” that any alleged violations were not “knowing and intentional,” and that meal and rest period claims cannot support wage statement penalties. Based on the foregoing, Defendant concluded, Plaintiff and Class Members were paid out upon separation of employment for all wages owed, and that Defendant believed, in good faith, that it was properly paying all wages to separating employees. In other words, Defendant concluded, Plaintiff would not be able to establish the willful elements of their Labor Code sections 226 or 203 claims. For these reasons, Defendant concluded, Plaintiff would not likely prevail on their claims. (Huether Decl. ¶19.)

If the Plaintiff continued litigating this matter, the class members could potentially receive **nothing** if the court agreed with Defendant’s position or if Defendant was able to defeat certification based on the individual inquiries that would be required regarding Plaintiff’s minimum wage and reimbursement claims. Furthermore, even if the Court agreed with Plaintiff, Plaintiff still had to prove Defendant faced exposure under Plaintiff’s derivative claims and acted intentionally and *willfully* in order to receive the additional penalties under Labor Code Sections 203. As such, Plaintiff’s decision to settle this matter was in the best interest of the Class Members.

This is a fair and reasonable result. Other substantial benefits also include that it is a non-reversionary, non-claims made settlement, which distributes the Distribution Fund on a pro rata basis based on the number of workweeks each Settlement Class Member worked for Defendant during the Settlement Period. (Settlement, § 40.d.) Participating Class Members and PAGA Employees will have one hundred eighty (180) calendar days from the date of issuance of the check to cash or otherwise deposit their check. For any check not cashed after 180 calendar days, the Settlement Administrator shall cancel the check and remit the funds to the State Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, et seq for the benefit of those Settlement Class Members who did not cash their checks. (Settlement, § 56). (Huether Decl. ¶20.)

1 The Settlement Amount is reasonable in light of the risks involved in this case—including
2 the prospect of a potential adverse summary judgment ruling, class certification issues as well as the
3 uncertainty of class certification, defenses to the case, potential appeal, the elements of willfulness
4 and/or injury required for certain penalties.

5 Plaintiff’s Counsel is convinced that the proposed Settlement is in the best interest of the class
6 based on the negotiations and a detailed knowledge of the issues present in this action. The
7 affirmative defenses asserted by Defendant, the prospect of a potential adverse summary judgment
8 ruling, preemption issues, class certification issues as well as the uncertainty of class certification,
9 the difficulties of complex litigation, the lengthy process of establishing specific damages and
10 various possible delays and appeals were also carefully considered by Class Counsel in agreeing to
11 the proposed Settlement. In light of the above, the proposed Settlement is well within the “ballpark”
12 of reasonableness and should be granted preliminary approval.

13 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

14 The court may make an order approving certification of a provisional settlement class after
15 the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement
16 purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals*
17 *Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) “The reason for this is that no trial is
18 anticipated in a settlement class case, so the case management issues inherent in the ascertainable
19 class determination need not be confronted.” (*Id.*; see also *7-Eleven Owners for Fair Franchising v.*
20 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action
21 for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiffs’ class for
22 settlement purposes only.

23 The requirements under California Code of Civil Procedure Section 382 are all met for the
24 purposes of certifying this case for settlement purposes:

- 25 • Numerosity: The settlement class consists of approximately 65 Class Members.
26 Thus, the requirement of numerosity is easily met because joinder 65 individual plaintiffs into a
27 single case is otherwise impracticable in light of the circumstances of this case.
28

1 • Typicality: The claims of the class representative are typical of the claims of the
2 class members as a whole. The named Plaintiff suffered the same alleged violations (e.g. failure to
3 pay minimum wages, reimbursement of business expenses, failure to pay timely wages, failure to
4 provide complete and accurate wage statements, and failure to pay all wages due upon separation of
5 employment) as the class as a whole did and, thus, the claims of the named Plaintiff fairly
6 represents the claims of the class as a whole.

7 • Ascertainability: The proposed “Class” is easily ascertainable based on Defendant’s
8 own payroll records.

9 • Adequacy: Plaintiff has proven to be an adequate class representative. He has
10 conducted himself diligently and responsibly in representing the class in this litigation, he
11 understands his fiduciary obligations, and he has actively participated in the prosecution of this
12 case. (Huether Decl. ¶21.) Plaintiff has spent hours in meetings and conferences with counsel to get
13 a better understanding of his work environment and requirements. Plaintiff continued to be actively
14 engaged in the ongoing settlement negotiations following mediation that were ultimately required to
15 finalize settlement. (*Id.*) Further, Plaintiff does not have any interest that is adverse to the interests
16 of the other class members. (*Id.*) Moreover, proposed class counsel is adequate to represent the
17 class for settlement purposes and has been appointed as class counsel before by this Court as well
18 as both State and Federal Courts. (Huether Decl. ¶25.)

19 • Commonality: Many common issues of law and fact unite the class. The common
20 questions of law and fact include, but are not limited to:

- 21 1) Whether Defendant failed to pay minimum wages owed;
- 22 2) Whether Defendant failed to reimburse employees for necessary business
 expenditures;
- 23 3) Whether Defendant failed to pay timely wages to Class Members;
- 24 4) Whether Defendant failed to provide the Class Members complete and
 accurate wage statements;
- 25 5) Whether Class Members are entitled to waiting time penalties for
26 Defendant’s failure to pay all wages upon separation of employment; and
- 27 6) Whether Defendant violated Business and Professions Code section 17200.

1 • Superiority: A class action is superior to other available means for the fair and
2 efficient adjudication of this controversy. Joinder of all members of the proposed class is
3 impractical. Class treatment will permit a large number of similarly-situated persons to prosecute
4 their common claims in a single forum simultaneously for settlement purposes without the
5 unnecessary duplication of effort and expense that numerous individual actions would engender.

6 **VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED**

7 The proposed Class Notice in the form attached to the Settlement as Exhibit A, should be
8 approved for dissemination to the Class Members. This document informs the Class of the terms of
9 the Settlement, of their right to receive their proportional share of the Settlement and the manner in
10 which to do so, of their right to request exclusion or to comment upon or object to the Settlement,
11 and of their right to appear in person or by counsel at the final approval hearing and to be heard
12 regarding approval of the Settlement. Adequate periods of time are provided by each of these
13 procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the
14 Notice will identify the information upon which the Class Member's share will be calculated as well
15 as the estimated amount he or she can expect to receive if he or she chooses to participate in the
16 settlement.

17 **VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE**

18 Plaintiff's Counsel seeks attorneys' fees and costs award of one-third (1/3) of the Settlement
19 Amount or One Hundred Thousand Dollars (\$100,000.00) and Class Counsel's costs not to exceed
20 Twenty-Five Thousand Dollars (\$25,000.00), for the time spent litigating this matter as well as
21 expenses incurred in the prosecution of the action thus far. Defendant will not object to an award
22 of attorneys' fees and costs in these amounts. The requested fee falls well within the historical
23 range of attorneys' fee awards under the common fund theory, which is generally from 20% to
24 50%. The requested fee is a fair compensation for undertaking complex, risky, expensive, and
25 time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits
26 achieved by Plaintiff's counsel for the Class Members. Plaintiff's counsel diligently litigated and
27 investigated this case.

28 ///

1 California courts have recognized that an appropriate method for awarding attorney's fees in
2 class actions is to award a percentage of the "common fund" created as a result of the settlement.
3 (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15
4 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253,
5 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the
6 common fund is fairness to the successful litigant, who might otherwise receive no benefit because
7 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
8 others who are entitled to share in the fund and who should bear their share of the burden of its
9 recovery; encouragement of the attorney for the successful litigant, who will be more willing to
10 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
11 is assured that he will be properly and directly compensated should his efforts be successful. (*City*
12 *& County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme
13 Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from
14 which others derive benefits may require those passive beneficiaries to bear a fair share of the
15 litigation costs." (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California
16 Supreme Court recognized that the common fund doctrine has been applied "consistently in
17 California when an action brought by one party creates a fund in which other persons are entitled to
18 share." (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.)

19 Several courts have expressed frustration with the alternative "lodestar" approach for
20 deciding fee awards, which usually involves wading through voluminous and often indecipherable
21 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D.
22 Cal 1989)] 723 F. Supp. 1373, 1375[.]) The percentage approach is preferable to the lodestar
23 because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages
24 efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement;
25 and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at
26 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to
27 determine the award of attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific*
28 *Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

1 Plaintiff's counsel's request for fees equal to 1/3 [33.33%] of the Settlement Amount is
2 within the range of reasonableness. Historically, courts have awarded percentage fees in the range
3 of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig., supra*,
4 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated on
5 what is a reasonable percentage of a common fund...Usually 50 per cent of the fund is the upper
6 limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a
7 disproportionate part of the recovery obtained for the class, though somewhat larger percentages
8 are not unprecedented." (Newberg, *supra*, §14.6.)

9 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
10 associated with this class action on a pure contingency basis. The factual and legal issues posed in
11 this case were highly disputed, and there were also risks as to whether or not a class would be
12 certified, leaving a large number of putative class members unlikely to receive any recovery.

13 Based on Class Counsel's past experience in class action wage and hour litigation, it is safe
14 to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to
15 expend substantial amounts of additional time to help Class Members understand the terms of the
16 proposed Settlement. It is also likely that, even after final approval of the Settlement has been
17 granted, Class Counsel will be called upon to expend additional amounts of time in the presentation
18 and resolution of contests and questions relating to Class Members' allocation under the terms of
19 the proposed Settlement, as to the amounts of individual claims and perhaps other individual
20 issues.

21 The Court should preliminarily approve the requested attorney's fees and costs, which are
22 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the
23 great risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed
24 by Defendant, and are well within established guidelines. The Class Members will also be notified
25 of the requested amount and have an opportunity to object to the requested fees.

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28 ///

1 **VIII. THE REQUESTED SERVICE AWARD IS REASONABLE**

2 The named Plaintiff is entitled to a Service Award for his service as class representative and
3 the risks associated with his role as Class Representative and named Plaintiff in this action.
4 Plaintiff understood and continues to understand his role as Class Representative, he has protected
5 the interests of Class Members during the pending of this matter and will continue to do so.
6 (Huether Decl. ¶26.) Plaintiff has spent hours in meetings and conferences with counsel to get a
7 better understanding of his work environment. (*Id.*) Even after mediation, he continued to be
8 engaged with counsel for the months of the continued negotiations that it took to ultimately finalize
9 a settlement as well as understanding and discussing the settlement agreement with his attorneys.
10 (*Id.*) Further, Plaintiff does not have any interest that is adverse to the interests of the other class
11 members. (*Id.*) Defendant will not oppose the application for an enhancement of \$8,900 to Plaintiff
12 as the Class Representative from the Settlement Amount for his services to the Settlement Class in
13 this action as well as providing the Defendant with a general release of any and of their rights and
14 claims against the Defendant. Class Counsel can attest that Plaintiff devoted a proportionate
15 amount of time and work assisting counsel in the case, communicating with counsel frequently,
16 providing documents and information regarding their employer and employment, which led to
17 increase in the value and ultimate success of the Settlement. (*Id.*)

18 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

19 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 20 1. Within fourteen (14) calendar days after the Parties receive written notice of
21 Preliminary Approval, Defendant shall provide to the Settlement Administrator
22 a list of the Class Members, including name, last known address, social security
23 number and number of work weeks worked for Defendant in California during
24 the Settlement Period (“Class Data”). (Settlement, § 44.)
- 25 2. The Notice, shall be sent by the Settlement Administrator to the Class Members,
26 by first class mail, within ten (10) calendar days of the Settlement
27 Administrator’s receipt of the Class Data. Prior to mailing the Notice to Class
28 Members, the Settlement Administrator shall run the Class Data through the
National Change of Address Database maintained by the United States Postal
Service to search for any known and identifiable address changes. (Settlement,
§ 45.)

///

- 1 3. Class Members shall have not more than sixty (60) calendar days after the date
2 the Notice is mailed to the Class to dispute the number of weeks worked
3 credited to them, object to the Settlement, or opt out of the Settlement.
 (Settlement, § 45.)
- 4 4. The filing date for the Motion for Final Approval of the Class Action
5 Settlement, and Motion for Final Approval of Plaintiff's Attorneys' Fees and
6 Costs and Service Award to the Class Representative will be determined by the
 Court.
- 7 5. The Final Fairness and Approval Hearing date will be determined by Court. The
8 parties request that the Final Fairness and Approval Hearing be set approximately
9 one hundred forty (140) days following the Court's granting of preliminary
 approval of the proposed Class Action Settlement.

10 **X. CONCLUSION**

11 The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and
12 immediate payment to Class Members; it is non-collusive; and it was achieved as the result of
13 informed, extensive, and arms' length negotiations conducted by counsel for respective parties who
14 are experienced in wage and hour class action litigation. For the foregoing reasons, the parties
15 respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the
16 proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement and set a
17 date for a final approval hearing.

18
19 Dated: December 14, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

21 By: 
22 Joseph Lavi, Esq.
23 Vincent C. Granberry, Esq.
24 Melissa A. Huether, Esq.
25 Attorneys for Plaintiff Martin Nolasco and
26 on behalf of himself and similarly situated
27 Component/Piece Rate Drivers
28