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similarly situated and similarly aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

RAFAEL JIMENEZ, individually and on
behalf of other persons similarly situated
and similarly aggrieved employees,

Plaintiffs,

v.

CARGO HS LLC, an active California
Limited Liability Company; and DOES 1
through 10,

Defendants.

Case No.: 21STCV15258

CLASS AND REPRESENTATIVE
ACTION

*[Assigned to Hon. Elihu M. Berle
in Dept. SS-6]*

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

[FILED CONCURRENTLY WITH
THE DECLARATION OF HAIK
HACOPIAN WITH EXHIBITS;
DECLARATION OF ZORIK
MOORADIAN; DECLARATION OF
RAFAEL JIMENEZ; AND
[PROPOSED] ORDER]

Date: July 13, 2023

Time: 9:00 a.m.

Dept.: SS-6

1 **PLEASE TAKE NOTICE** that, pursuant to Cal. Rules of Court, rule 3.769, on July
2 13, 2023 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department SS-6 of
3 the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012,
4 Plaintiff Rafael Jimenez ("Plaintiff"), individually and on behalf of a similarly-situated class
5 of individuals, will and hereby does move this Court for an order:

6 1. Preliminarily approving the proposed class settlement of this lawsuit;

7 2. Provisionally certifying the Class, defined as follows:

8 All hourly, non-exempt employees who are currently or have
9 been employed by Defendant Cargo HS LLC in the State of
10 California at any time during the period of April 21, 2017
11 through March 3, 2023 ("Class Period").

12 3. Preliminarily appointing Plaintiff Rafael Jimenez as Class Representative;

13 4. Preliminarily appointing Zorik Mooradian and Haik Hacopian of Mooradian
14 Law, APC as Class Counsel;

15 5. Preliminarily approving the proposed settlement of Plaintiff's Private
16 Attorneys General Act ("PAGA") claims;

17 6. Appointing CPT Group as the third-party settlement administrator;

18 7. Scheduling a hearing to consider whether the class settlement should be finally
19 approved, and whether to award an amount for the Service Award to the Class Representative,
20 attorneys' fees and costs to Class Counsel, and settlement administration costs; and

21 8. Approving the proposed Class Notice, and ordering that it shall be
22 disseminated to the proposed Settlement Class as provided in the Class Action and PAGA
23 Settlement Agreement.

24 This Motion is based on this Notice of Motion, the accompanying Memorandum of
25 Points and Authorities, the Declaration of Haik Hacopian with Exhibits, the Declaration of
26 Zorik Mooradian, the Declaration of Rafael Jimenez, the pleadings and other papers filed in
27 this action, and on any further oral or documentary evidence or argument presented at the time
28 of hearing.

 The Class Action and PAGA Settlement Agreement is attached as **Exhibit "A"** to the

1 Declaration of Haik Hacopian. The proposed Class Notice is attached as Exhibit “A” to the
2 Class Action and PAGA Settlement Agreement. See HH Decl. ¶10, Ex. 1.

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Dated: June 12, 2023

MOORADIAN LAW, APC

By: /s/ Haik Hacopian
Zorik Mooradian, Esq.,
Haik Hacopian, Esq.,
Attorneys for Plaintiff Rafael Jimenez,
individually and on behalf of other persons
similarly situated and similarly aggrieved
employees

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4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).....18

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff, Rafael Jimenez (“Class Representative” or “Plaintiff”) and Defendant Cargo
4 HS LLC (“CARGO” or “Defendant”) have reached a proposed class settlement with a non-
5 reversionary Gross Settlement Amount of \$550,000 for a Class consisting of approximately
6 350 non-exempt employees who worked for CARGO at two locations in California from April
7 1, 2017 through March 3, 2023 (“Class Period”), which is also the date of the Parties’
8 mediation. Class Members will release claims through June 1, 2023 and receive settlement
9 payments based on the proportionate workweeks they worked for Cargo through that date.
10 The Settlement anticipates coverage for a minimum of 16,177 workweeks and a maximum of
11 17,795 through the end of the release period on June 1, 2023, before a negotiated escalator
12 provision may be invoked. This settlement results in a fair, reasonable, and adequate recovery
13 consisting of a gross workweek value of \$32.38 (assuming 16,986 workweeks), and an
14 average settlement payment in excess of \$850.00.

15 This Settlement resolves this class action lawsuit and settles the wage and hour claims
16 for all Settlement Class Members who do not request exclusion. Payments will be made on an
17 opt-out non-reversionary basis.

18 The proposed settlement is memorialized in the “Class Action and PAGA Settlement
19 Agreement” hereinafter referred to as “Settlement Agreement” or “S.A.,” which is based on
20 the LASC model agreement for class and PAGA settlements. A true and correct copy of which
21 is attached to the accompanying Declaration of Haik Hacopian (hereinafter “HH Decl.”) as
22 **Exhibit “A”** and a redline version is attached as **Exhibit “B”**.

23 The Parties have conducted an investigation concerning the facts and law during the
24 pendency of this action and which included production of class records and data and expert
25 analysis of same, conferences, and a mediation session before an experienced mediator, Mr.
26 Lou Marlin.

This proposed settlement is well within the range of what constitutes a fair, reasonable,
and adequate settlement to all concerned especially in light of the legal and factual obstacles

1 that Plaintiff faced, the sharply contested issues involved, the risks and costs of further
2 litigation, and the tangible monetary benefits to be received by Plaintiff and the Class. The
3 proposed notice procedure comports with Cal. Rules of Court, rule 3.769, and due process
4 requirements. The notice program should be approved and a final fairness hearing set.

5 **II. SUMMARY OF THE LITIGATION**

6 **A. Defendant, Class Members, and Plaintiff**

7 Defendant Cargo HS LLC (Cargo) is engaged in the business of aircraft cargo handling
8 and operated facilities serving Los Angeles and San Francisco International Airports. Non-
9 exempt employees included workers who loaded and unloaded trucks or transferred trucks
10 from one warehouse to another. Cargo underwent a consolidation and expansion in 2021.
11 During this time, Cargo switched timesheet tracking systems to an electronic timekeeping
12 system (AMG WebTime). Declaration of Haik Hacopian (hereinafter “HH Decl.”) ¶7.

13 Plaintiff Jimenez was employed at Cargo’s Los Angeles facility from April 2, 2020
14 through April 20, 2020. The class count as of March 3, 2023 (mediation date), per Cargo, is
15 approximately 364 employees. There are at least 346 employees covered by PAGA. Plaintiff
16 tallies 17,696 weekly pay periods from the data and 80,826 shifts. The average shift length
17 based on the time data is 7.9 hours and average rate of pay is \$23.00/hour. Plaintiff estimates
18 that two-thirds of the class was hired in 2021 or after. HH Decl., ¶8.

18 **B. Plaintiff’s Lawsuit**

19 On April 21, 2021, Plaintiff Rafael Jimenez commenced this Action by filing a
20 Complaint alleging causes of action against CARGO for: (1) Failure to Provide Meal Periods;
21 (2) Failure to Provide Paid Rest Periods; (3) Failure to Pay Wages; (4) Failure to Timely Pay
22 Wages at Termination/Separation; (5) Failure to Timely Pay Vacation Wages at Termination;
23 (6) Failure to Provide Accurate Wage Statements; and (7) Violation of Unfair Business
24 Practices Act – Bus. & Prof. Code §§ 17200, et seq. On November 23, 2021, Plaintiff filed a
25 First Amended Complaint alleging an additional cause of action against CARGO HS LLC for
26 PAGA Penalties. The First Amended Complaint is the operative complaint in the Action (the
“Operative Complaint.”) S.A. ¶2.1.

1 **C. Discovery and Mediation**

2 The Parties have conducted investigation of the operative facts and applicable law
3 during the pendency of the case through informal discovery requests. Prior to mediation,
4 Plaintiff obtained copies of exemplar payroll correction forms, policies including employee
5 handbook, a 15% sample of electronic time and payroll data, as well as handwritten employee
6 timesheets. The electronic payroll file that Plaintiff had expertly analyzed reflected 9,336 lines
7 of data and the electronic timekeeping data reflected 21,602 lines of data. HH Decl. ¶9.

8 On March 3, 2023, Plaintiff and Defendant participated in a full-day mediation before
9 Mr. Lou Marlin. The Parties were able to reach a resolution at the mediation and entered into
10 a Memorandum of Understanding (“MOU”). The Parties ultimately entered into their Class
11 Action and PAGA Settlement Agreement incorporating the MOU’s terms and which was
12 based on the LASC model agreement for class and PAGA settlements, a true and correct copy
13 of the final executed version of which is attached as **Exhibit “A”** to the Declaration of Haik
14 Hacopian. HH Decl. ¶10, Ex. A. Attached thereto as **Exhibit “B”** is a redline version of the
15 Settlement Agreement which tracks the Parties’ changes to the model agreement. HH Decl.
16 ¶11, Ex. B.

17 **III. THE PROPOSED SETTLEMENT**

18 **A. The Essential Terms of the Settlement**

19 If the Court approves this settlement, Defendant will pay the gross sum of \$550,000
20 (“Gross Settlement Amount” or “GSA”) which will be used to fund this Settlement and make
21 payments to Class Members, who will be paid on an all-in non-reversionary opt-out basis. The
22 Gross Settlement Amount excludes the employer share of taxes on the wage component of the
23 Settlement which will be separately funded by Defendant. HH Decl. ¶12.

24 The principal terms of the class action settlement are summarized below:

- 25 • Gross Settlement Amount. S.A. ¶¶1.22 and 3.1: \$550,000
26 • Minus Court-approved Attorneys’ Fees (33 1/3%). S.A. ¶3.2.2: (\$183,333.33)
 • Minus Court-approved Cost Award. S.A. ¶3.2.2: (\$15,000)

- 1 • Minus Court-approved Service Award
- 2 and general release by Plaintiff. S.A. ¶3.2.1: (\$7,500)
- 3 • Minus estimated settlement administration costs. S.A. ¶3.2.3: (\$10,000)
- 4 • Minus 75% PAGA Payment to LWDA. S.A. ¶3.2.5: (\$18,750)
- 5 • Minus 25% PAGA Share to Aggrieved Employees. S.A. ¶3.2.5: (\$6,250)

6 Total Deductions from Gross Settlement Amount: (\$240,833.33)

7 Net Settlement Amount (“NSA”). S.A. ¶1.28: \$309,166.67

8 The approximate estimated simple average class settlement payment, assuming
9 maximum awards and participation by 350 individuals, calculates to \$883.33. HH Decl. ¶13.
10 There are presently no other claims or lawsuits that would be impacted by this settlement. HH
11 Decl. ¶14.

12 **B. Class Members**

13 Class Members are defined as follows:

14 All hourly, non-exempt employees who are currently or have been
15 employed by Defendant Cargo HS LLC in the State of California at any
16 time during the period of April 21, 2017 through March 3, 2023 (“Class
17 Period”). S.A. ¶1.5.

18 Aggrieved Employees are defined as follows:

19 All hourly, non-exempt employees who are currently or have been
20 employed by CARGO in the State of California at any time during the
21 period of April 21, 2020 through March 3, 2023 (“PAGA Period”). S.A.
22 ¶1.4.

23 **C. Settlement Payments to Class Members**

24 The Individual Class Payment, which is a Participating Class Member’s pro rata share
25 of the Net Settlement Amount, is calculated according to the number of Workweeks they
26 worked during the Class Release Period (“the period from April 21, 2017 through June 1,
2023”). An Individual Class Payment calculated by (a) dividing the Net Settlement Amount
by the total number of Workweeks worked by all Participating Class Members during the
Class Release Period and (b) multiplying the result by each Participating Class Member’s
Workweeks. S.A. ¶3.2.4.

1 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25%
2 of the PAGA Penalties calculated according to the number of Workweeks worked during the
3 PAGA Release Period (“the period from April 21, 2020 through June 1, 2023”). S.A. ¶¶1.24
4 and 1.31. The Administrator will calculate each Individual PAGA Payment by (a) dividing
5 the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$6,250.00) by the
6 total number of PAGA Release Period Pay Periods worked by all Aggrieved Employees
7 during the PAGA Release Period and (b) multiplying the result by each Aggrieved
8 Employee’s PAGA Release Period Pay Periods. S.A. ¶3.2.5.1.

9 **D. Settlement Allocation to Class Members**

10 Twenty Percent (20%) of each Participating Class Member’s Individual Class
11 Payment will be allocated to settlement of wage claims (the “Wage Portion”), subject to tax
12 withholding and will be reported on an IRS W-2 Form. Eighty Percent (80%) of each
13 Participating Class Member’s Individual Class Payment will be allocated to settlement of
14 claims for interest and penalties (the “Non-Wage Portion”), not subject to wage withholdings
15 and will be reported on IRS 1099 Forms. S.A. ¶3.2.4.1. Individual PAGA Payments will be
16 reported on IRS 1099 Forms. S.A. ¶3.2.5.2.

17 **E. Opt-Outs and Objections**

18 Each Class Member shall have sixty (60) days after the Administrator mails the Class
19 Notice (plus an additional seven (7) days for Class Members whose Class Notice is re-mailed)
20 to exclude themselves or challenge the number of Class workweeks or PAGA Pay Periods
21 attributed to them. Participating Class Members (those Class Members who have not opted-
22 out) may send written objections to the Administrator during that timeframe.

23 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
24 send the Administrator a signed written Request for Exclusion which is a letter from a Class
25 Member or his/her representative that reasonably communicates the Class Member’s election
26 to be excluded from the Settlement and includes the Class Member’s name, address and email
address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
emailed, or postmarked by the Response Deadline. S.A. ¶7.5.1.

1 Participating Class Members (those Class Members who do not opt-out) may send
2 written objections to the Administrator. In the alternative, Participating Class Members may
3 appear in Court (or hire an attorney to appear in Court) to present verbal objections at the
4 Final Approval Hearing. S.A. ¶7.6.1.

5 Each Class Member may challenge the number of Class Workweeks and PAGA Pay
6 Periods (if any) allocated to the Class Member in the Class Notice with the Administrator.
7 The Administrator must encourage the challenging Class Member to submit supporting
8 documentation. In the absence of any contrary documentation, the Administrator is entitled to
9 presume that the Workweeks contained in the Class Notice are correct so long as they are
10 consistent with the Class Data. The Administrator's determination of each Class Member's
11 allocation of Workweeks and/or Pay Periods, if not satisfactory to the challenging Class
12 Member, will be submitted to the Court for resolution at the Final Approval Hearing. S.A.
13 ¶7.5.5.

14 **F. Release**

15 Effective on the date when CARGO fully funds the entire Gross Settlement Amount
16 and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
17 Payments, Plaintiff, Class Members, and Class Counsel will release claims against all
18 Released Parties. S.A. ¶5.

19 Release by Participating Class Members: All Participating Class Members, on behalf
20 of themselves and their respective former and present representatives, agents, attorneys, heirs,
21 administrators, successors, and assigns, release Released Parties from any and all claims under
22 state, federal, or local law, whether statutory or common law arising out of the claims
23 expressly pleaded in the Action and all other claims, such as those under the California Labor
24 Code, applicable Wage Orders, regulations, and/or other provisions of law, that could have
25 been pleaded based on the facts pleaded in the Action for (1) failure to pay minimum wages,
26 (2) failure to pay overtime wages, (3) failure to provide all meal breaks; (4) failure to provide
all rest breaks, (5) failure to provide accurate itemized wage statements, (6) failure to timely
pay wages during employment and upon termination, (7) failure to maintain required records,

(8) unfair business practices, and all claims for injunctive relief, liquidated damages, penalties, including all civil penalties under the Labor Code Private Attorneys General Act of 2004, interest, fees, and costs, and all other claims and allegations made that could have been made in the Action during the Class Release Period based on the facts and allegations in the Operative Complaint. Except as set forth this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Release Period. S.A. ¶5.2. "Class Release Period" means the period from April 21, 2017 through June 1, 2023. S.A. ¶1.12.

Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties, fees, and costs that were alleged, or reasonably could have been alleged, based on the PAGA Release Period facts stated in the Operative Complaint and the PAGA Notice including (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide all meal breaks; (4) failure to provide all rest breaks, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages during employment and upon termination, and (7) failure to maintain required records. S.A. ¶5.2. "PAGA Release Period" means the period from April 21, 2020 through June 1, 2023. S.A. ¶1.31.

"Released Parties" means: CARGO and each of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, owners, partners, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and CARGO's counsel of record in the Action. S.A. ¶1.41.

Only Named Plaintiff will be providing a general release and waiver of Civil Code §1542. S.A. ¶5.1.

//

1 **G. Service Award to Named Class Representative**

2 As part of the settlement, at the time of seeking final approval of the proposed class
3 action settlement, Plaintiff will separately apply for a Service Award in the amount of Seven
4 Thousand Five Hundred Dollars (\$7,500) for his services to the Settlement Class and for a
5 general release of all claims. S.A. ¶¶3.2.1 & 5.1. "[I]ncentive awards are fairly typical in class
6 action cases ... and are intended to compensate class representatives for work done on behalf
7 of the class [and] to make up for financial or reputational risk undertaken in bringing the
8 action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.
9 Plaintiff's requested incentive payment is intended to recognize Plaintiff's contributions on
10 behalf of the Class and is fair in relation to the total settlement, his efforts, and standing alone.
11 HH Decl. ¶15. Plaintiff has put a significant amount and time and effort participating in this
12 case and understands his role and obligations as class representative. Declaration of Rafael
Jimenez, ¶¶3-8.

13 **H. Attorneys' Fees & Costs**

14 Defendant agrees not to oppose Plaintiff's counsel's application for an attorneys' fees
15 award of \$183,333.33, which is one-third (33 1/3%) of the Gross Settlement Amount of
16 \$550,000, and payment of documented litigation costs and expenses up to \$15,000. S.A.
17 ¶3.2.2. Plaintiff will submit detailed support for his request for a fee award along with his
18 motion for final approval of the settlement. For now, counsel submits that the requested fee is
19 fair compensation for undertaking a complex, risky, expensive, and potentially time-
20 consuming litigation involving this case on a purely contingent fee basis. Here, counsel has
21 incurred substantial attorneys' fees independently conducting pre-filing investigations,
22 analyzing the claims, litigating the case, conducting legal research and analysis, reviewing
23 significant documentary and electronic records produced by Defendant, performing data
24 analysis of employee timekeeping data and payroll records, preparing for and attending a full-
25 day mediation, negotiating the settlement, preparing and amending the long-form Class
26 Action and PAGA Settlement Agreement, Class Notice, and preparing this Motion for
Preliminary Approval, and otherwise aggressively pursuing the interests of the putative class.

1 HH Decl. ¶16.

2 Both California and federal courts have recognized that an appropriate method for
3 awarding attorneys' fees in class actions is to award a percentage of the "common fund"
4 created as a result of the settlement. *See Wershba v. Apple Computer, Inc.* (2001) 91
5 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/
6 multiplier" methods). Plaintiff counsel's request for fees of one-third (33 1/3%) of the Gross
7 Settlement Amount is within the range of reasonableness. Historically, courts have awarded
8 percentage fees in the one-third range. *See, e.g., Laffitte v. Robert Half Int'l, Inc.* (2014) 231
9 Cal.App.4th 860, 878 ("[S]tudies show that . . . fee awards in class actions average around
10 one-third of the recovery."); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (2008)
11 (accord); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*,
12 J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies
13 of class action litigation nationwide conclude that a one-third fee is consistent with market
14 rates).

15 In conclusion, counsel submits that its request for attorneys' fees is reasonable when
16 viewed as an overall percentage of the settlement as well as with reference to counsel's
17 loadstar. In light of the risks and significant work undertaken by counsel, the results obtained
18 for the class, and the efficiency with which the Parties collaborated to conduct the litigation,
19 the fee and cost request is fair and reasonable. HH Decl. ¶17.

20 **IV. PRELIMINARY APPROVAL IS WARRANTED**

21 Rules of Court, rule 3.769 conditions the settlement of a class action on court approval,
22 which is generally evaluated under the federal standards applicable under Rule 23 of the Fed.
23 R. Civ. P. 23. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337
24 (2012) (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair,
25 reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150
26 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether a
proposed settlement is fundamentally fair, adequate, and reasonable"). To be approved, a

1 settlement must be "fair, reasonable and adequate to all concerned." *Reed*, 208 Cal.App.4th at
2 337. Settlement is the preferred means of dispute resolution, particularly in complex class
3 action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The
4 Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken
5 as a whole is fair, and is not the product of fraud or collusion between the negotiating parties.
6 *See, e.g., Hanlon*, 150 F.3d at 1027. There is an initial presumption of fairness when the
7 settlement agreement was negotiated at arms' length by experienced counsel. *See, e.g., Kullar*
8 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. A trial court's decision to approve
9 a class action settlement is within the sound discretion for the trial judge and may be reversed
10 only if the trial court acted outside of its broad discretion. *See Munoz v. BCI Coca-Cola*
Bottling Co. of L.A. (2010) 186 Cal.App.4th 399, 407.

11 **A. Standard for Preliminary Approval**

12 To make a fairness determination, the Court should consider several factors, including:
13 "The strength of Plaintiff's case, the risk, expense, complexity and likely duration of further
14 litigation, the risk of maintaining class action status through trial, the amount offered in
15 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
16 experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
17 "The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
18 of the factors depending on the circumstances of each case." *Wershba v. Apple Computer,*
19 *Inc., supra*, 91 Cal.App.4th at 245. It should be noted that the reasonableness of a settlement
20 is not dependent upon its actual value approaching the potential recovery plaintiff might have
21 received if he had succeeded at trial, *Sutter Health Unins. Pricing Cases* (2009) 171
22 Cal.App.4th 495, 511 (emphasizing that the court must be mindful that "[t]he ... class case
23 could have gone to an incredibly lengthy and expensive jury trial, and the class could have
24 lost the case" and must account for that likelihood in discounting the value of the claims for
25
26

1 settlement purposes [emphasis in original]). As discussed below, the proposed settlement is
2 fair, adequate and reasonable in light of the overall balance of factors in this case.

3 **B. The Strength of Plaintiff's Case**

4 1. Unpaid Wage Claims

5 Employee time was tracked through physical time sheets until an electronic time
6 system was implemented. Plaintiff contended that the physical time sheets were
7 unrepresentative of actual work time in that they were manipulated by managers to avoid
8 overtime and for shifts to reflect compliant meal breaks. Defendant countered that it required
9 that non-exempt employees hand write their exact clock in time for the day, meal break clock
10 out time, meal break clock in time, and clock out time for the day. That employees were also
11 required to provide their signatures next to each day's time entries attesting that the reported
12 time was accurate. As to the electronic time system, employees were required to clock in,
13 clock out for meal breaks, clock in from meal breaks, and clock out for the day. HH Decl. ¶18.

14 Any potential claim for unpaid wages will be extremely individualized and difficult to
15 prove. The extent to which an employee worked off the clock and was not compensated will
16 likely depend on a specific shift, position, location, management, and other circumstances that
17 will not translate to certification. Any assessment will rely on morass of individual inquiries
18 that will require a determination as to whether Cargo caused any instance of work off-the-
19 clock or whether such was due to employee choice and without Cargo's awareness. Also,
20 individual inquiries will be necessary as to whether any adjustment that reduced a time entry
21 was proper, e.g. a forgotten clock out, or improper, e.g. a manager adjusting a clock out to
22 avoid employee overtime. HH Decl. ¶19.

23 Generously assuming an average loss of 15 mins per shift, at the average hourly rate
24 of \$23.00 across the 80,826 total shifts, results in \$463,600 in potentially unpaid wages.
25 Although Defendant represented that there was no time rounding, Plaintiff's analysis revealed
26 656 net underpaid hours due to rounding translating to \$22,632 in wages owed. Ultimately, in
light of factual variations making certification highly unlikely, as well as issues of proof
bearing on merits, Plaintiff does not value an unpaid wage claim in excess of 30% of the

1 assessed exposure, or \$139,080. HH Decl. ¶20.

2 2. Meal Breaks and Rest Breaks

3 Cargo has produced a memorandum to employees, dated March 1, 2020, that reflects
4 a meal break policy requiring “at least an uninterrupted, duty-free thirty (30) minute meal
5 break no later than the fifth (5th) hour of work.” Cargo represented that employees were
6 instructed to log their meal breaks on both physical timesheets and the electronic system.
7 Plaintiff contends that although the written time sheets for Plaintiff largely show timely meal
8 breaks of sufficient duration, employees would be cleared for a meal break only upon a
9 loading/unloading job was completed. As such, 15-20 minute meal breaks would occur very
late into a shift. HH Decl. ¶21.

10 Plaintiff’s analysis of the electronic time data reflects recorded meal breaks for 86.7%
11 of shifts in excess of five hours. As extrapolated to the class, where 95.7% of the total 80,626
12 shifts exceed five hours, the result is 66,896 total shifts reflecting a meal break. As far as meal
13 duration, only 2.3% would be of a duration of less than thirty minutes. The foregoing reflects
14 a high degree of compliance. HH Decl. ¶22.

15 It will be very difficult for Plaintiff to prevail on a meal break claim in the face of
16 largely compliant objective findings. Plaintiff would have to craft some certification theory
17 that would enable him to establish that what appear to be compliant recorded meal breaks
18 were in fact manipulated to show compliance. Significant individualized inquiries would
19 entail in efforts to discern whether specific entries trigger a meal period violation or not. As
20 such, at a potential exposure value as derived from Plaintiff potentially being able to certify a
21 claim around half of the 66,896 shifts with recorded meals, the amount would come to
22 \$763,304. In light of the challenges in crafting a certifiable theory and prevailing on the merits,
23 Plaintiff does not value a meal break claim in excess of 50% of assessed exposure, or
\$384,652. HH Decl. ¶23.

24 As to rest breaks, Plaintiff complained that there was no written policy and Plaintiff’s
25 experience was that of non-receipt of any rest breaks. Defendant pointed out that employees
26 were made aware of rest break requirements and any instances of missed rest breaks were a

1 result of employee volition. Moreover, that certification of such a claim is highly improbable
2 due to the absence of written records (as rest breaks are not required to be recorded) and a
3 morass of factual inquiry necessary to assess the reasons why any individual employee missed
4 a rest break in specific instances. Plaintiff assesses potential maximum exposure for 50% of
5 the 80,120 shifts in excess of 3.5 hours entitling employees to rest breaks, or \$921,380. In
6 light of the challenges inherent in the claim, both on certification and merits, Plaintiff does
7 not assess the value of a rest break claim in excess of 40% of exposure, of \$368,552. HH Decl.
8 ¶24.

9 3. Waiting Time Penalties

10 Defendant represented that it is their practice to pay employees their final paychecks
11 by a physical check with all hours worked, vacation pay and sick pay and that they would
12 provide an employee's final paychecks through direct deposit at the employee's
13 request. Also, if vacation pay and sick pay cannot be processed on the employee's final day,
14 Defendant has always processed the checks within 72 hours after the employee's last day. HH
15 Decl. ¶25.

16 Based on the above, the claim for waiting time penalties would ultimately be derivative
17 of the claims for unpaid wages and meal and rest premiums and the weaknesses described
18 there would directly impact the viability of this claim. *See Naranjo v. Spectrum Sec. Svcs.*
19 (2022) 13 Cal.5th 93. At 120 terminated employees from April 21, 2018 to March 3, 2023,
20 the maximum waiting time penalties would calculate to \$662,400. (120 employees x \$23.00
21 x 8 hours x 30 days). In light of the above, however, Plaintiff does not believe the value of a
22 derivative waiting time claim exceeds 25% of the assessed maximum, or \$165,600. HH Decl.
23 ¶26.

24 4. Wage Statement Penalties

25 The regular wage statements were facially compliant with the requirements of Labor
26 Code Section 226. As with waiting time penalties, this claim is derivative of unpaid wage,
meal, and rest break violations. *See Naranjo, supra*. Although maximum exposure calculates
to \$849,850 for the 277 employees during the wage statement penalty period for 8,637 pay

1 periods from April 21, 2020 to March 2, 2023, value may be assessed to 25% of the maximum
2 exposure, or \$212,462.50, due to this claim's reliance on the underlying claims and subject to
3 weaknesses described therein. HH Decl. ¶27.

4 5. PAGA Claims

5 There are 14,471 weekly PAGA Pay Periods. Assuming Plaintiff is to identify a
6 predicate violation for every pay period across the unpaid wage, meal break, and rest break
7 claims and assessing a \$100 penalty for each and every pay period, results in \$1,447,100 in
8 maximum penalties. Applying an 80% reduction to maximum penalties results in a potential
9 exposure of \$289,420. HH Decl. ¶8. *See e.g., Fleming v. Covidien* (C.D. Cal. Aug. 12, 2011)
10 2011 WL 7563047 at *4 (reduction of PAGA civil penalties for wage statement violations
11 from \$2,800,000 to \$500,000, because employees suffered no injury, defendants were not
12 aware that their wage statements violated the law, and that they took prompt steps to correct
13 violations.) The intention of PAGA penalties is not to serve a punitive or compensatory
14 purpose but to sufficiently act as a deterrent to future Labor Code violations. Moreover, a
15 court may readily conclude that a lower penalty assessment, or a nominal one, will suffice as
16 this Defendant is a smaller employer, who should not be penalized for opting for weekly pay
17 periods, and who made beneficial changes (i.e. electronic timekeeping) ostensibly in response
18 to Plaintiff's notice and lawsuit. Plaintiff does not believe that any six figure PAGA penalty
19 recovery is very realistic in this case. In light of the foregoing, and also because of potential
20 defenses to the substantive claims that would bear on PAGA liability as well and potential for
21 rejection of all or part of the claim on trial manageability grounds, the Parties' \$25,000
22 allocation for release of the PAGA claims reflects a very fair compromise and is extremely
23 reasonable. HH Decl. ¶28.

24 C. Risks and Uncertainty

25 Although Plaintiff steadfastly maintains that his claims are meritorious, he
26 acknowledges that his position includes real risks and uncertainty. In deciding whether to
approve the settlement, the Court must balance the risk factors against an "understanding of

1 the amount in controversy and the realistic range of outcomes of the litigation.” *Kullar*, 168
2 Cal.App.4th at 130, 133; *Munoz*, 186 Cal.App.4th at 408-09. In this case, the settlement is fair
3 and adequate when compared to the total potential exposure and the risks inherent in
4 Plaintiff’s claims. HH Decl. ¶29.

5 As courts have observed, “simply because a settlement may amount to only a fraction
6 of the potential recovery does not in itself render it unfair or inadequate. Compromise is the
7 very nature of settlement.” *Boyd v. Bechtel Corp.* (C.D. Cal. 1979) 485 F. Supp. 610, 618. In
8 this case, Plaintiff considers the settlement to be significantly more than a “fraction,”
9 particularly considering the various potential complications, dangers and pitfalls that
10 proceeding would entail. HH Decl. ¶29.

11 In addition to considering the value of immediate payment for Settlement Class
12 Members, Plaintiff’s counsel discounted the value of the class claims based on a variety of
13 factors, including the California Supreme Court’s decision in *Brinker Restaurant Corp. v.*
14 *Superior Court* (2012) 53 Cal.4th 1004. Defendant could have argued that it sufficiently
15 provided breaks without “policing” them. Moreover, Plaintiff’s theory of liability for rest
16 break violations was weaker since employers have no obligation to record rest breaks (as rest
17 breaks are paid breaks). The relative lack of written proof, except for potential testimony from
18 Class Members, diminished the prospect of certifying the claim. Thus, a significant discount
19 on those claims was warranted. HH Decl. ¶¶21-24.

20 The potential penalties were deemed to be substantial claims. In response, Defendant
21 raised the good-faith dispute defense to the waiting time penalty claims, thereby precluding
22 their imposition¹. Success on the penalty claims would require proving that the Defendant’s
23 conduct was “willful.” As to PAGA claims, there existed a high likelihood of a nominal award
24 on account of CARGO being a smaller employer and having made beneficial changes (i.e.

25 ¹ See, e.g., Cal. Code Regs. § 13520 (a good-faith dispute exists to a claim for waiting time penalties "when an
26 employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part
of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith
dispute did exist.").

1 implementing electronic time tracking) potentially in response to this litigation. HH Decl.
2 ¶¶25-28.

3 In short, Plaintiff's ability to prevail on certification and merits was far from certain.
4 There is the risk that prolonged litigation would likely have produced a worse result for
5 Settlement Class Members. Thus, this factor supports preliminary approval.

6 **D. Risk, Expense, Complexity, and Duration of Further Litigation**

7 This factor also weighs in favor of settlement approval. The parties had engaged in
8 significant review and assessment of the asserted claims which included expert assistance.
9 Defendant could have moved for summary adjudication on all or some of the claims.
10 Moreover, preparation for class certification and trial remained for the Parties as well as the
11 prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or
12 summary judgment ruling. As a result, the parties would incur considerably more attorneys'
13 fees and costs through trial. This settlement avoids those risks and the accompanying expense.
HH Decl. ¶30. Hence, an additional support for a preliminary approval.

14 **E. Risk of Maintaining Class Action Status**

15 To the extent any claims were certified, Defendant would certainly seek to decertify
16 them. Absent settlement, there was a risk that there would never be a certified class. HH Decl.
17 ¶31. Thus, this factor, too, supports preliminary approval of the settlement.

18 **F. Amount Offered in Settlement Given Realistic Value of Claims**

19 This proposed settlement provides a fair and reasonable monetary recovery for the
20 Class in the face of disputed claims and significant hurdles. HH Decl. ¶29. Courts recognize
21 that the reasonableness of a settlement is not dependent upon it approaching the potential
22 recovery plaintiffs might receive if successful at trial. *See In re Omnivision Tech., Inc.* (N.D.
23 Cal. Jan. 9, 2008) 2008 WL 123936; *see also Nat'l Rural Telecomm. Coop. v. Directv, Inc.*
24 (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be
25 acceptable even though it amounts to only a fraction of the potential recovery"); *Officers for*
26 *Justice v. Civil Serv. Comm* (9th Cir. 1982) 688 F. 2d 615, 628 (it is "the complete package,
taken as a whole rather than the individual component parts, that must be examined for overall

1 fairness”). The \$550,000 Gross Settlement Amount captures 43% of the \$1,270,446.50
2 assessed case value on viable class claims, which is extremely favorable given the significant
3 risk factors described above. HH Decl. ¶29.

4 **G. Discovery Completed and the Status of Proceedings**

5 The lawsuit involved formal discovery which included the production of significant
6 payroll and timekeeping records, and information regarding the size and makeup of the
7 putative class. It was only after the completion of this process and expert analysis that the
8 parties participated in mediation and thereafter reached the proposed settlement. HH Decl. ¶¶9
9 & 10. Here is an additional factor germane to the preliminary approval.

10 **H. The Experience and Views of Counsel**

11 "Parties represented by competent counsel are better positioned than courts to produce
12 a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
13 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is
14 represented by competent and experienced counsel who pressed Plaintiff's claims forward
15 against a reputable employment defense firm. Class Counsel possesses extensive experience
16 litigating wage and hour class actions from the plaintiff side and has been appointed as class
17 counsel in numerous cases alleging similar claims. HH Decl. ¶¶2-3, Declaration of Zorik
18 Mooradian (hereinafter "ZM Decl.") ¶¶2-5. Class Counsel conducted review and analysis of
19 Defendant's practices and timekeeping and payroll records and drew on its extensive
20 experience in similar cases to effectively assess the strengths and weaknesses of Plaintiff's
21 claims. The settlement was also reached with the input and assistance of an experienced and
22 respected neutral mediator. HH Decl. ¶¶9 & 10. This factor strongly supports preliminary
23 approval. *See, Kullar, supra*, 168 Cal.App.4th at 130 ("The court undoubtedly should give
24 considerable weight to the competency and integrity of counsel and the involvement of a
25 neutral mediator in assuring itself that a settlement agreement represents an arm's length
26 transaction entered without self-dealing or other potential misconduct.").

V. THE PRELIMINARY APPROVAL STANDARD HAS BEEN MET

The Court should grant preliminary approval of the settlement and direct that notice

1 be given if the proposed settlement when it: (1) falls within the range of possible approval;
2 (2) appears to be the product of serious, informed and non-collusive negotiations; and (3) has
3 no obvious deficiencies. See Manual for Complex Litigation § 30.41 (3rd Ed. 1995); 4
4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

5 The proposed settlement reflects a substantial portion of the estimated recovery that
6 the Settlement Class could reasonably expect in light of the potential litigation risks. As well,
7 the proposed settlement is for a sizable sum in light of the strong defenses and provides for
8 significant individual recovery. In accordance, the proposed settlement is within the range of
9 possible approval for communication of a notice in conformity and consideration thereof by
10 the Settlement Class. The Court will have the opportunity to again assess the reasonableness
11 of the settlement after the Class has had the opportunity to opt-out or object. HH Decl. ¶32.

12 **A. The Settlement Resulted From Serious, Informed, and Non-Collusive**
13 **Negotiations**

14 This proposed class-wide settlement is the result of arm's-length negotiations by
15 counsel, punctuated by a full-day mediation session before an experienced mediator and is,
16 therefore, entitled to an initial presumption of fairness. See *Kullar*, 168 Cal.App.4th at 130.
17 Plaintiff reviewed data for the class and conducted analysis of the data and records, with the
18 participation of an expert, to arrive at his estimated damage figures. HH Decl. ¶¶9-10, 20-28.

19 The parties reached an agreement to mediate before Mr. Lou Marlin, a respected
20 neutral mediator and were able to agree to a resolution at mediation. They then finalized the
21 Class Action and PAGA Settlement Agreement, basing it on the LASC model. HH Decl. ¶10.
22 Therefore, this factor also supports preliminary approval.

23 **B. Provisional Class Certification is Appropriate Here**

24 “Litigation by class action has long been recognized as a superior method of resolving
25 wage and hour claims in California.” *Martinez v. Joe’s Crab Shack Holdings* (2014) 231
26 Cal.App.4th 362, 367. Class certification is appropriate when there exists “an ascertainable
and sufficiently numerous class, a well-defined community of interest, and substantial benefits
from certification that render proceeding as a class superior to alternatives.” *Brinker*, 53

1 Cal.4th 1004 at 1021. As the Supreme Court has noted, “[c]laims alleging a uniform policy
2 consistently applied to a group of employees in violation of the wage and hour laws are of the
3 sort routinely, and properly, found suitable for class treatment.” *Id.* at 1033. This is exactly
4 such a case.

5 **1. The Proposed Class Is Ascertainable and Numerous**

6 A class is “ascertainable” where the members “may be readily identified without
7 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v.*
8 *Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed
9 Class is defined by reference to two objective characteristics: (1) individuals who worked as
10 non-exempt employees for Defendant CARGO in California, and (2) were employed by
11 Defendant CARGO at some time during the Class Period. Therefore, Class Members can be
12 identified from Defendant’s personnel and other employment records. As to numerosity, the
13 Class consists of around 350 individuals, making it highly impracticable to bring all class
members before the Court. HH Decl. ¶8.

14 **2. The Community of Interest Requirements for Class Treatment are**
15 **Met**

16 “[T]he community of interest requirement embodies three factors: (1) predominant
17 common questions of law or fact; (2) class representatives with claims or defenses typical of
18 the class; and (3) class representatives who can adequately represent the class.” *Brinker*, 53
19 Cal.4th at 1021.

20 **a. Common Issues of Law and Fact Predominate**

21 The focus in a certification dispute is not on the merits of the case, but rather on what
22 types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug*
23 *Store, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. “Common questions of law and fact
24 are required in order to assure the interests of the litigants and the Court are furthered by
25 permitting the suit to proceed as a class action rather than in a multiplicity of separate suits.”
26 *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975. Where the defendant
systematically engages in policies and practices that allegedly violate the Labor Code and

1 subject all of its employees to the same unlawful conduct, common questions of law and fact
2 will predominate over individualized issues. *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*
3 (2008) 169 Cal.App.4th 1524, 1538 (holding that a class of limousine drivers challenging their
4 compensation plan was proper for class treatment). Here, the predominance factor is met
5 because each claim challenges an alleged common policy or practice that Plaintiff contends is
6 illegal. Plaintiff's claims under the Labor Code are predicated on: a failure to pay for all hours
7 worked; meal, rest period policies and practices. These sorts of claims are commonly held to
8 be proper for class certification. *See, e.g., Williams v. Superior Court* (2013) 221 Cal.App.4th
9 1353, 1371 (certifying class based on uncompensated work time).

10 **b. The Claims of Named Plaintiff are Typical**

11 The typicality requirement is satisfied where class representatives have claims that are
12 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987)
13 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the
14 same goods as the putative class in a consumer class action). Here, the claims of Plaintiff are
15 typical of those held by the members of the proposed Class. First, Plaintiff was employed by
16 CARGO during the proposed Class Period and was subject to its wage and hour practices.
17 Second, Plaintiff claims he was injured by the same challenged practices he claims injured the
18 Class as a whole. Therefore, Plaintiff has suffered the same alleged injuries as the other
19 members of the Class and satisfies the typicality requirement.

20 **c. Plaintiff & Class Counsel Will Fairly & Adequately
21 Represent the Class**

22 The adequacy of representation requirement examines conflicts of interest between
23 named parties and the class they seek to represent. *See Capital People First v. State Dept. of*
24 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. A party's claim of representative
25 status will only be defeated by a conflict that "goes to the very subject matter of the litigation."
26 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, Plaintiff and his counsel
will adequately represent the class as there are no conflicts between the named Plaintiff and
the Class he seeks to represent, and Plaintiff has claims that are in line with those of the class.

1 Declaration of Rafael Jimenez, ¶¶3&4, HH Decl. ¶5, ZM Decl. ¶7. Plaintiff’s counsel also has
2 extensive experience in wage and hour class action litigation. HH Decl. ¶¶2-6, ZM Decl. ¶¶2-
3 5. For these reasons, the Court should provisionally certify the proposed Class.

4 **3. Class-Wide Settlement is Superior to Other Available Methods of**
5 **Resolution**

6 Here, the alternative method of resolution would be multiple individual lawsuits,
7 challenging the same alleged wage and hour policies and practices of CARGO, and each
8 seeking a small amount of damages. Such duplicative litigation would be extremely inefficient
9 and costly for the courts and wasteful for judicial forums that would otherwise devote
10 resources to other matters. HH Decl. ¶33. In light of these concerns, a class action is the
11 superior method of resolving these wage and hour claims. *Martinez*, 231 Cal.App.4th at 367
12 (“Litigation by class action has long been recognized as a superior method of resolving wage
13 and hour claims in California.”)

14 **VI. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
15 **NOTICE**

16 This Court should order distribution to the Class Members of the proposed Class
17 Notice in both English and Spanish by first-class mail. S.A. ¶¶1.11 and 7.42. This manner of
18 giving notice is the "best notice practicable" under the circumstances because it provides
19 "individual notice to all members who can be identified through reasonable effort." *See Eisen*
20 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. As a general rule, class notice must strike
21 a balance between thoroughness and the need to avoid unduly complicating the content of the
22 notice and confusing class members. *Wershba*, 911 Cal.4th at 252. The proposed Notice of
23 Settlement is attached as Exhibit A to the Class Action and PAGA Settlement Agreement.
24 S.A. ¶5, Ex. A.

25 Here, the Parties propose that the settlement be administered by CPT Group (“CPT”
26 or “Settlement Administrator”), an experienced class action settlement administrator. S.A.
¶55(a). The Settlement Administrator’s duties are detailed in the Class Action and PAGA

1 Settlement Agreement. S.A. ¶¶55 & 56. Class Members' addresses are ascertainable through
2 Defendant's personnel and payroll records. To the extent that the addresses of former
3 employees have changed, CPT will run all the addresses provided through the United States
4 Postal Service Notice of Change Of Address database (which provides updated addresses for
5 any individual who has moved in the previous four years and has notified the U.S. Postal
6 Service of a forwarding address) and perform skip traces to obtain current address
7 information. *Id.* The Settlement Agreement allocates a maximum of \$10,000 for
8 administration expenses, which is appropriate in light of the number of class members and the
9 size of the settlement and the extent of work to be performed in administering the settlement
10 of the class. S.A. ¶3.2.3. Plaintiff has secured a bid from CPT to administer the settlement for
\$8,500. HH Decl., ¶34, Ex. D.

11 The content of the proposed Class Notice satisfies Cal. Rules of Court, rule 3.769(d)
12 because it advises class members of the nature of the claims, basic contentions and denials of
13 the parties and the key terms of the settlement, the deadline to opt-out, or object to the
14 settlement and the procedure by which to do so, explains the recovery formula and expected
15 recovery amount for each class member, and advises them that they will be bound by the terms
16 of the settlement if they do not request exclusion. S.A. ¶7.4.2, Ex. 1. The proposed Class
17 Notice will also notify Settlement Class Members of the final approval hearing date and
18 provides the contact information for Class Counsel, and advises Settlement Class Members
19 that they may enter an appearance through counsel if they wish to. This manner of giving
20 notice satisfies Cal. Rules of Court, rule 3.769(e) as the most reliable and cost-effective
21 method of reaching Settlement Class Members.

22 **VII. THE PAGA ALLOCATION AND PAYMENTS SHOULD BE APPROVED**

23 The Settlement allocates \$25,000 for resolution of Plaintiff's PAGA claim with
24 \$18,750 (75%) payable to the LWDA and \$6,250 (25%) payable to PAGA Members. S.A.
25 ¶3.2.5. PAGA Members are consist of persons who are employed or have been employed by
26 Defendant CARGO in the state of California as non-exempt employees during the period of

1 time beginning on April 21, 2020, and ending on March 3, 2023. S.A. ¶¶23 & 24. Plaintiff's
2 PAGA notice was communicated to the LWDA and Defendant on April 21, 2020 and was
3 assigned case number LWDA-CM-830970-21. HH. Decl., ¶14, Exh. "C". To the extent an
4 Aggrieved Employee is also a Settlement Class Member, they will receive their Individual
5 PAGA Settlement Payment even if they submit an exclusion request. As required, this Motion
6 and all supporting papers will be concurrently submitted to the LWDA.

7 8 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

9 The Parties request that this Court set a hearing for final approval of the settlement on
10 a date appropriately scheduled to follow the deadline by which Settlement Class Members
11 must file objections to the settlement or opt-out. See Cal. Rule of Court, rule 3.769. The parties
12 propose that the final papers in support of the settlement be filed and served no later than 14
13 days prior to the hearing on final approval, and that the hearing on final approval of the
14 settlement be set 120 days after the date of the preliminary approval hearing, to allow a
15 reasonable period for notice and administration, and an opportunity to object to the settlement,
16 without excessive delay to the Class as to the receipt of their settlement shares.

17 **IX. CONCLUSION**

18 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
19 approve the proposed settlement, provisionally certify the Settlement Class, and enter the
20 Proposed Order submitted concurrently herewith.

21 Dated: June 12, 2023

MOORADIAN LAW, APC

22 By: /s/Haik Hacopian

23 Zorik Mooradian, Esq.,

24 Haik Hacopian, Esq.,

25 Attorneys for Plaintiffs Rafael Jimenez,
26 individually and on behalf of other persons
similarly situated and similarly aggrieved
employees