

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

Victoria B. Rivapalacio (SBN 275115)

Andrew G. Ronan (SBN 312316)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiffs

WILLIE MARQUEZ and ANDY MIKHAEL

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and ANDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CIVSB2125337

*[Assigned for all purposes to the Hon. David Cohn,
Dept. S-26]*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 13, 2023

Time: 10:00 a.m.

Division: S-26

Complaint Filed: August 31, 2020

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen(SBN 238571)
enguyen@lidmanlaw.com
Milan Moore, Esq. (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Ste 150
El Segundo, CA 90245
Tel: 424-322-4772
Fax: 424-322-4775

Attorneys for Plaintiff,
JULIO GARCIA

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, CA 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff,
JULIO GARCIA

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July
3 13, 2023 at 10:00 a.m. in Department S-26 of the above-entitled Court, located at 247 West Third Street,
4 San Bernardino, California 92415, Plaintiffs Willie Marquez, Andy Mikhael, and Julio Garcia
5 (“Plaintiffs”), jointly and on behalf of a class of similarly situated individuals, will and hereby does
6 move this Court for:

- 7 1. Preliminary approval of the proposed class settlement of this lawsuit;
8 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification
9 of the following Settlement Class defined as follows:

10 All current and former Delivery Drivers of Defendant Accurate Delivery Systems,
11 Inc. who worked at any time in California during the Class Period. For purposes of
12 the Settlement, the “Class Period” shall mean the time period between August 18,
2017 and the earlier of the date of preliminary approval or June 7, 2023.

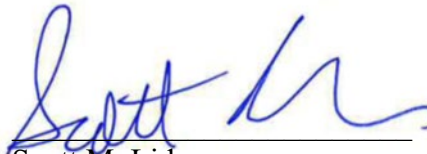
- 13 3. Preliminary appointment of Plaintiffs Willie Marquez, Ahdy Mikhael, and Julio Garcia as
14 Class Representatives;
15 4. Preliminary appointment of Paul K. Haines of Haines Law Group, APC, Scott M. Lidman,
16 Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, and Norman B. Blumenthal,
17 Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw
18 LLP as Class Counsel;
19 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
20 and to permit an enhancement award to Plaintiffs, Settlement Administration costs, civil
21 penalties payable to the California Labor Workforce Development Agency, and attorneys’
22 fees and costs to Class Counsel;
23 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
24 Administrator for mailing notices; and
25 7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
26 Class Action and Settlement and Notice of Settlement Award) which is attached to the
27 Settlement as **Exhibit C** and an order that it be disseminated to the proposed Settlement
28 Class Members as provided in the Settlement Agreement.

1 This Motion is based on this notice of motion, the memorandum of points and authorities, the
2 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Julio
3 Garcia, Plaintiff Willie Marquez, Plaintiff Ahdy Mikhael, Kyle Nordrehaug, and Jodey Lawrence of
4 Phoenix Settlement Administrators and the exhibits attached thereto, the pleadings and other papers
5 filed in this action, and on any further oral or documentary evidence or argument presented at the time
6 of hearing.

7
8 Dated: April 27, 2023

Respectfully submitted,
LIDMAN LAW, APC

9
10 By:



11 Scott M. Lidman
12 Attorney for Plaintiff
13 JULIO GARCIA
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	8
II.	SUMMARY OF THE LITIGATION	9
A.	THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTIATIONS	9
1.	The Parties	9
2.	Procedural History	10
3.	Discovery	11
4.	Arms-Length Negotiations.....	11
III.	ARGUMENT	12
A.	CLASS CERTIFICATION FOR SETTLEMENT PURPOSES.....	12
1.	Numerosity is Satisfied.	12
2.	Commonality is Satisfied.....	13
3.	Typicality is Satisfied.	13
4.	Adequacy is Satisfied.....	14
B.	THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR, ADEQUATE, AND REASONABLE.....	15
1.	The Preliminary Approval Standard is Met.....	15
a.	The Strength of Plaintiff’s Case.....	15
b.	Risk, Expenses, Complexity, and Duration of Further Litigation	16
c.	Risk of Maintaining Class Action Status	16
d.	Overview of the Settlement Agreement.....	16
e.	The Parties Engaged in Fair and Honest Negotiations.....	18
f.	Amount Offered in Settlement Given Realistic Value of Claims	19
g.	The Settlement Is Within the Range of Possible Approval	25
h.	The Experience and Views of Counsel.....	26
i.	Attorneys’ Fees and Costs	26
j.	Administration Costs	27
k.	Class Representatives’ Service Awards.....	27
l.	PAGA Penalty.....	28
m.	Taxes.....	28
n.	Uncashed Funds	29
C.	SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES	29
D.	THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE TO SETTLEMENT CLASS MEMBERS.....	29
E.	THE COURT SHOULD SET A FINAL APPROVAL HEARING.....	30
IV.	CONCLUSION.....	30

TABLE OF AUTHORITIES

Federal Cases

Dunleavy v. Nadler

213 F.3d 454 (9th Cir. 2000) 25

Eisen v. Carlisle & Jacquelin

417 U.S. 156 (1974)..... 29

Fleming v. Covidien Inc.

Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011) 25

Glass v. UBS Finan. Servs.

Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007)..... 25

Hanlon v. Chrysler Corp.

150 F.3d 1011 (9th Cir. 1998) 12, 15

Hopson v. Hanesbrands, Inc.

No. CV 08-0844 EDL, 2008 WL 3385452 (S.D.Cal. Apr. 13, 2009) 28

In re M.L. Stern Overtime Litig.

No. CV 07-0118 BTM (JMAx), 2009 WL 995864 (S.D. Cal. Apr. 13, 2009)..... 28

In re Pacific Enterprises Securities Litigation

47 F.3d 373 (9th Cir. 1995) 26

In re Syncor ERISA Litig.

516 F.3d 1095 (9th Cir. 2008) 15

Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.

221 F.R.D. 523 (C.D. Cal. 2004) 25

State Cases

Amaral v. Cintas Corp. No. 2

163 Cal.App.4th 1157 (2008) 23

B.W.I. Custom Kitchen v. Owens-Illinois, Inc.

191 Cal.App.3d 1341 (1987) 13

1	<i>Benton v. Telecom Network Specialists, Inc.</i>	
2	220 Cal.App.4th 701 (2013)	12
3	<i>Bowles v. Sup. Ct.</i>	
4	44 Cal.2d 574 (1955)	11
5	<i>Brinker Restaurant Corp. v. Superior Court</i>	
6	53 Cal. 4th 1004 (2012)	21
7	<i>Capital People First v. State Dept. of Developmental Services</i>	
8	155 Cal.App.4th 676 (2007)	13
9	<i>Cochran v. Schwan's Home Service, Inc.</i>	
10	228 Cal.App.4th 1137 (2014)	22
11	<i>Dunk v. Ford Motor Co.</i>	
12	48 Cal.App.4th 1794 (1996)	14
13	<i>In re Cellphone Fee Termination Cases</i>	
14	186 Cal.App.4th 1380 (2010)	26
15	<i>Kao v. Joy Holiday</i>	
16	12 Cal.App.5th 947 (2017)	23
17	<i>Kullar v. Foot Locker Retail, Inc.</i>	
18	168 Cal.App.4th 116 (2008)	14, 18, 25
19	<i>Laffitte v. Robert Half Int'l, Inc.</i>	
20	1 Cal.5th 480 (2016)	25
21	<i>McGhee v. Bank of America</i>	
22	60 Cal.App.3d 442 (1976)	13
23	<i>Nordstrom Comm'n Cases</i>	
24	186 Cal. App. 4th 576 (2010)	27
25	<i>Price v. Starbucks Corp.</i>	
26	192 Cal.App.4th 1136 (2011)	23
27	<i>Reed v. United Teachers Los Angeles</i>	
28	208 Cal.App.4th 322 (2012)	11

1	<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i>	
2	34 Cal.4th 319 (2004)	12
3	<i>Sevidal v. Target Corp.</i>	
4	189 Cal.App.4th 905 (2010)	11
5	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
6	203 Cal.App.4th 1112 (2012)	24
7	<i>Wershba v. Apple Computer, Inc.</i>	
8	91 Cal.App.4th at 245 (2001)	14
9	Federal Rules	
10	F.R.C.P. Rule 23	12
11	State Statutes and Rules	
12	Cal. Civ. Proc. § 382	12
13	Cal. Civ. Code § 1542	28
14	Cal. Lab. Code § 226(e)	23
15	Cal. Lab. Code § 2699(e)(2)	25
16	C.R.C. Rule 3.766(d)	30
17	C.R.C. Rule 3.766(e)	30
18		
19	Other Sources	
20	4 Newberg on Class Actions § 14.6 (4th Ed. 2013)	12
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Willie Marquez, Ahdy Mikhael, and Julio Garcia (“Plaintiffs”) brought this class and
4 representative action against Defendant Accurate Delivery Systems, Inc. (“Defendant” or “Accurate
5 Delivery”). Plaintiffs’ primary claims/allegations which are being settled subject to Court approval are
6 that Accurate Delivery: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages
7 owed; (3) failed to provide all legally-required meal periods; (4) failed to authorize and permit all legally-
8 required rest periods; (5) failed to reimburse necessary business expenses; (6) failed to provide accurate,
9 itemized wage statements, (7) failed to timely pay all wages upon termination; (8) engaged in unfair
10 competition; and (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of
11 2004 (“PAGA”).

12 Plaintiffs now respectfully request that this Court preliminarily approve this non-reversionary,
13 class action settlement,¹ in which Accurate Delivery has agreed to pay Nine Hundred Thousand Dollars
14 and Zero Cents (\$900,000.00) on behalf of the following Settlement Class:

15
16 All current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc.
17 who worked at any time in California during the Class Period. For purposes of the
18 Settlement, the “Class Period” shall mean the time period between August 18, 2017
and the earlier of the date of preliminary approval or June 7, 2023.

19 The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$900,000.00
Minus Court-approved attorneys’ fees (update to 1/3 of GSA):	\$300,000.00
Minus Court-approved, verified costs (up to \$30,000):	\$30,000.00
Minus Court-approved Class Representative Service Awards:	\$30,000.00
Minus Settlement Administration Costs:	\$5,750.00
Minus PAGA civil penalties payable to LWDA:	\$22,500.00
Net Settlement Amount (“NSA”):	\$511,750.00

27 ¹ The Stipulation of Class Action and PAGA Settlement (“Settlement”) is attached to the Declaration of Scott M. Lidman as
28 Exhibit I. The proposed Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and
Notice of Settlement Award) which is attached to the Settlement as Exhibit C. All defined terms in this motion have the same
definitions as used in the Settlement.

1 Significantly, Settlement Class members do not need to file a claim to benefit from the Settlement
2 because all Settlement Class members will automatically receive a payment unless they affirmatively opt-
3 out. There were approximately 88 Settlement Class members as of the date of mediation. With a Net
4 Settlement Amount of \$511,750.00, this means that the average payment to participating Settlement Class
5 members is estimated to be approximately **\$5,815.34**.

6 Additionally, \$7,500.00 of the Gross Settlement Amount has been designated as the “PAGA
7 Amount”. There were approximately 56 PAGA Employees as of the date of mediation. As such, the
8 average individual PAGA Employee settlement payment is projected to be approximately **\$133.93**.

9 This proposed Settlement is well-within the range of possible approval in light of the significant
10 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
11 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff
12 respectfully requests that the Court grant preliminary approval of the Settlement.

13 **II. SUMMARY OF THE LITIGATION**

14 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH** 15 **NEGOTIATIONS**

16 **1. The Parties**

17 Accurate Delivery is a transportation/courier company that delivers, among other goods,
18 perishable food products in refrigerated transport vehicles. *See* Declaration of Scott M. Lidman (“Lidman
19 Decl.”), ¶ 10.

20 Plaintiff Willie Marquez, a former non-exempt Delivery Driver, was employed by Accurate
21 Delivery from approximately April 2018 through approximately September 2020. Declaration of Willie
22 Marquez (“Marquez Decl.”), ¶ 2.

23 Plaintiff Ahdy Mikhael, a former non-exempt Delivery Driver, was employed by Accurate
24 Delivery from approximately November 2019 through approximately March 2020. Declaration of Ahdy
25 Mikhael (“Mikhael Decl.”), ¶ 2.

26 Plaintiff Julio Garcia, a former non-exempt Delivery Driver, was employed by Accurate Delivery
27 from approximately 2018 through approximately September 23, 2020. Declaration of Julio Garcia
28 (“Garcia Decl.”), ¶ 2.

1 **2. Procedural History**

2 On May 28, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael sent a letter to the California Labor
3 & Workforce Development Agency exhausting their administrative remedies before filing a civil claim
4 under the PAGA against Defendant. The LWDA took no action in response to that letter. Declaration of
5 Kyle Nordrehaug (“Nordrehaug Decl.”), ¶ 6.

6 On August 18, 2021, Plaintiff Julio Garcia filed a class action Complaint against Defendant in Los
7 Angeles County Superior Court, in the matter entitled *Julio Garcia v. Accurate Delivery Systems, Inc., a*
8 *California corporation; and Does 1 through 100, inclusive*, Case No. 21STCV30557. On January 27,
9 2022, pursuant to a request by Plaintiff Julio Garcia, the Los Angeles County Superior Court dismissed
10 his action without prejudice. Lidman Decl., ¶ 10. On August 18, 2021, Plaintiffs Julio Garcia sent a letter
11 to the California Labor & Workforce Development Agency exhausting his administrative remedies before
12 filing a civil claim under the PAGA against Defendant. The LWDA took no action in response to that
13 letter. *Id.*

14 On August 31, 2021, Plaintiff Willie Marquez filed a representative PAGA action against
15 Defendant, entitled *Willie Marquez. v. Accurate Delivery Services, Inc.*, in the San Bernardino County
16 Superior Court (Case No. CIVSB 2125174), before Hon. David Cohn of Dept. S-26. In June 2022,
17 pursuant to a request by Plaintiff Willie Marquez, the San Bernardino County Superior Court dismissed
18 his action without prejudice. Nordrehaug Decl., ¶ 7.

19 On August 31, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael filed a class action against
20 Defendant, entitled *Willie Marquez, et al. v. Accurate Delivery Systems, Inc.*, in the San Bernardino
21 County Superior Court (Case No. CIVSB 2125337), before Hon. David Cohn of Dept. S-26 (hereinafter,
22 the “Action”). Nordrehaug Decl., ¶ 8.

23 On January 11, 2022, a First Amended Complaint was filed in the Action on behalf of Plaintiffs
24 alleging the following claims: (1) all claims for unfair business practices that could have been premised
25 on the facts, claims, causes of action or legal theories described above; (2) failure to pay all minimum
26 wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay
27 for non-productive time under the commission pay plan; (3) failure to pay all overtime wages owed,
28 including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate

of pay, and failing to pay for non-productive time under the commission pay plan; (4) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (5) failure to authorize and permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (6) failure to issue accurate, itemized wage statements (7) failure to timely pay all wages due upon separation of employment; (8) failure to reimburse necessary business expenses; and (9) violations of the California Labor Code Private Attorney General Act of 2004 (“PAGA”) seeking civil penalties premised on the facts, claims, causes of action and legal theories described above. Lidman Decl., ¶ 10.

3. Discovery

After agreeing to participate in early mediation, Accurate Delivery informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for the putative class. Lidman Decl., ¶ 11. Additionally, Accurate Delivery produced information and data points needed for a fruitful mediation, including without limitation, the number of employees, workweeks at issue, pay periods at issue, meal and rest period policies and procedures, and payroll policies. After a review and analysis of the documents and information produced by Accurate Delivery, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs’ case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiffs’ claims and Accurate Delivery’s defenses thereto, if a settlement could not be reached.

4. Arms-Length Negotiations

On March 7, 2023, a mediation was held with Lynn Frank, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs’ claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Class Action and PAGA Settlement (“Settlement”). *Id.*

//

//

1 **III. ARGUMENT**

2 **A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

3 California Rule of Court 3.769 conditions settlement of a class action on court approval, which is
4 generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil
5 Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial court to
6 determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler*
7 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine “whether a proposed
8 settlement is fundamentally fair, adequate, and reasonable”).

9 As further explained below, the Settlement Class satisfies the criteria for certification of a
10 settlement class under California law because: (1) the Settlement Class is so numerous that joinder would
11 be impractical; (2) common questions of law and fact predominate over individual questions such that
12 class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs’ claims
13 are typical of the claims of absent Settlement Class members; and (4) Plaintiffs and their counsel will
14 fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ. Proc. § 382.

15 **1. Numerosity is Satisfied.**

16 Here, the proposed Settlement Class consists of approximately 88 members (as of the time of
17 mediation), and is therefore sufficiently numerous as to make joinder impracticable. *See* Lidman Decl.,
18 ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of
19 a trust sufficiently numerous). Thus, numerosity is satisfied.

20 Further, a class is “ascertainable” where the members “may be readily identified without
21 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*
22 (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined
23 as “All current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked
24 at any time in California during the time period between August 18, 2017 and the earlier of the date of
25 preliminary approval or June 7, 2023” which can be ascertained through Accurate Delivery’s employment
26 records. Lidman Decl., ¶ 14.

27 //

28 //

1 **2. Commonality is Satisfied.**

2 The focus in a certification dispute is not the merits, but rather on what types of questions,
3 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court*
4 *(Rocher)* (2004) 34 Cal.4th 319, 327.

5 Here, Settlement Class members’ claims arise from Accurate Delivery’s common, uniform
6 policies and practices that applied to Settlement Class members during the class period. Lidman Decl., ¶
7 15. Specifically, Plaintiffs alleged that Accurate Delivery’s common and uniform policies and practices
8 resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all
9 overtime wages owed; (3) failure to provide all legally-required meal periods; (4) failure to authorize and
10 permit all legally-required rest periods; (5) failure to reimburse necessary business expenses; (6) failure
11 to provide accurate, itemized wage statements, (7) failure to timely pay all wages upon termination; (8)
12 engagement in unfair competition; and (9) liability for civil penalties under the PAGA. As a result of the
13 common and uniform policies and practices that applied to all Settlement Class members, their claims
14 involve common questions of law and fact, including but not limited to:

- 15 1. Whether Accurate Delivery failed to pay all minimum wages;
16 2. Whether Accurate Delivery failed to pay all overtime wages;
17 3. Whether Accurate Delivery failed to provide all legally-required meal periods;
18 4. Whether Accurate Delivery failed to authorize and permit all legally-required rest periods;
19 5. Whether Accurate Delivery failed to reimburse necessary business expenditures;
20 6. Whether Accurate Delivery failed to furnish accurate, itemized wage statements;
21 7. Whether Accurate Delivery failed to pay all wages owed upon separation of employment;
22 and
23 8. Whether Accurate Delivery engaged in unfair business practices.

24 These alleged practices result in common questions as to the affected Settlement Class members.
25 *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

26 **3. Typicality is Satisfied.**

27 The typicality requirement is satisfied where class representatives have claims that are typical of
28 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,

1 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
2 in a consumer class action).

3 Here, Plaintiffs' claims are typical of those held by the members of the proposed Settlement Class.
4 First, Plaintiffs were employed by Accurate Delivery during the Class Period as Delivery Drivers and
5 were subject to Accurate Delivery's wage and hour policies at issue in this case. Marquez Decl., ¶ 2;
6 Mikhael Decl., ¶ 2; Garcia Decl., ¶ 2. Second, Plaintiffs were allegedly injured by the same challenged
7 policies that allegedly injured the Settlement Class as a whole. For example, Plaintiffs assert that they
8 were not paid all of their minimum and/or overtime wages, did not receive all meal and rest periods,
9 received inaccurate itemized wage statements, similar to those received by the Settlement Class members,
10 were not reimbursed for business expenses, and were not paid all of their wages upon their separations of
11 employment with Accurate Delivery. *Id.* Given that Accurate Delivery's timekeeping, pay,
12 reimbursement, and meal and rest period policies and practices applied to all Delivery Drivers, Settlement
13 Class members possess a similar interest and have suffered similar alleged injuries as Plaintiffs.
14 Accordingly, because Plaintiffs' claims and those of the Settlement Class all arise from the same conduct,
15 typicality is satisfied.

16 **4. Adequacy is Satisfied.**

17 The adequacy requirement examines conflicts of interest between named parties and the class(es)
18 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
19 Cal.App.4th 676, 697.

20 Here, there are no apparent conflicts of interest between Plaintiffs and the Settlement Class they
21 seek to represent. Indeed, Plaintiffs' interests are aligned with those of the Settlement Class members, as
22 they all seek relief under the same facts and legal theories. Additionally, Class Counsel does not have
23 any conflict of interest with the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d
24 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and
25 the named plaintiff had no interests antagonistic to those of the proposed class).

26 Further, Class Counsel also have extensive experience in wage and hour class action litigation and
27 have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Elizabeth Nguyen ("Nguyen
28

Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; and Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4; Nordrehaug Decl., ¶ 1-5.

B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR, ADEQUATE, AND REASONABLE

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

1. The Preliminary Approval Standard is Met

To make a fairness determination, the Court should consider several factors, including: “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff’s Case

Although Plaintiffs maintains that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As described below, Accurate Delivery presented multiple defenses to Plaintiffs’ claims, both on the merits and class certification. Thus, while Plaintiffs were prepared to litigate these claims through certification, and ultimately trial, success was far from certain.

//

1 **b. Risk, Expenses, Complexity, and Duration of Further Litigation**

2 Although the parties engaged in informal discovery throughout this action, the parties still had
3 significant formal discovery to complete, including written discovery, party depositions, putative class
4 member depositions, and expert discovery had the matter not settled. Lidman Decl., ¶ 36. Moreover,
5 Plaintiffs still had to file for class certification, and faced the prospect of appeals in the wake of a disputed
6 class certification ruling for Plaintiffs and/or an adverse summary judgment ruling. *Id.* Even if the class
7 sought to be certified by Plaintiffs was in fact certified, the parties would incur considerably more
8 attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This
9 Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary
10 approval.

11 **c. Risk of Maintaining Class Action Status**

12 Plaintiffs had not yet filed their motion for class certification and as such, the extent to which
13 Plaintiffs’ proposed class was certifiable is somewhat speculative. Absent settlement, there was a risk
14 that there would not be a certified class at the time of trial.

15 **d. Overview of the Settlement Agreement**

16 If the Court approves this Settlement, Accurate Delivery will pay a Gross Settlement Amount
17 (“GSA”) of \$900,000.00.² Lidman Decl., ¶¶ 13, Exh. 1 (Settlement, ¶ 4). Significantly, this Settlement
18 is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a
19 Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award
20 unless he or she affirmatively opts out of the Settlement. *Id.*

21 With the exception of the Settlement Administrator’s fees, if required by the Settlement
22 Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement
23 fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and
24

25 ² Defendant represents that there are an estimated 14,814 workweeks worked by Settlement Class
26 members during the Class Period. If the number of workweeks worked by Settlement Class members
27 during the Class Period is more than 10% greater than this figure (*i.e.*, if there are 16,296 or more
28 workweeks) worked by the Settlement Class members), Defendant agrees to increase the Gross Settlement
Amount on a *pro rata* basis above the 10% (*i.e.*, if there was 11% increase in the number workweeks
during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%).
Settlement, ¶ 4.H.

1 PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement
2 Administrator in twenty-four (24) equal installments of Thirty-Seven Thousand Five Hundred Dollars and
3 Zero Cents (\$37,500.00). The first Settlement Installment shall be paid by no later than June 6, 2023. and
4 will be deposited with the Settlement Administrator in an escrow account set up by it. The second through
5 twenty-fourth Settlement Installment payments shall be due every thirty (30) days thereafter. The
6 employer's share of payroll taxes and any increase to the Gross Settlement Amount due pursuant to the
7 Escalator Clause, if applicable, shall be deposited with the Settlement Administrator along with the
8 twenty-fourth and final Settlement Installment. *See* Settlement, ¶ 4.B.³

9 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award
10 to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties payable to the LWDA, the
11 Settlement requires Accurate Delivery to pay a Net Settlement Amount ("NSA") of at least **\$511,750.00**
12 to all Settlement Class members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 1.

13 According to Accurate Delivery, there are approximately 88 total Settlement Class members (who
14 worked a total of approximately 14,814 workweeks during the relevant time period and 2,940 pay periods
15 during the relevant time period). Lidman Decl., ¶ 14. From the Net Settlement Amount, the Settlement
16 Administrator will calculate each Settlement Class member's Settlement Award based on the following
17 formula:

18 The Net Settlement Amount shall be allocated to Settlement Class members who
19 worked during the Class Period, as follows: each participating Settlement Class
20 member shall receive a proportionate settlement share based upon the number of
21

22 ³ The Settlement Administrator shall hold all portions of the Gross Settlement Amount in an interest-
23 bearing account for benefit of the Settlement Class until the time for disbursement. In the event that the
24 Gross Settlement amount is not paid as required under Paragraph 4.B. of this Agreement, after Defendant's
25 counsel receives written notice of the default, and given ten (10) days to cure, then at Plaintiffs' option,
26 the Settlement, Final Approval Order, and Judgment may be enforced by remedies available and
27 Defendant agrees to the payment of reasonable attorneys' fees and costs necessary in enforcing the
28 Agreement. The Parties agree that unless otherwise ordered by the Court, there shall be no disbursements
of the Gross Settlement Amount unless and until the Court has issued final approval of the Settlement,
and the Gross Settlement Amount and employer-side taxes have been fully funded. If for any reason the
Court denies approval with prejudice of the Settlement, any portion of the Gross Settlement Amount
deposited by Defendant with the Administrator as of that date of denial shall be returned to Defendant in
full. Settlement, ¶ 4.C.

workweeks worked as a Delivery Driver during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked as a Delivery Driver during the Class Period, and the denominator of which is the total workweeks worked as Delivery Drivers by all Settlement Class members (who do not opt out) who worked during the Class Period.

Settlement, ¶ 5.B.i.

Additionally, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099. Settlement, ¶ 5.C.

Thus, the average Individual Settlement Payment is projected to be approximately **\$5,815.34 (which is approximately \$34.55 per workweek)** and the average individual PAGA Employee settlement payment to the 56 PAGA Employees is projected to be approximately **\$133.93 (which is approximately \$2.55 per pay period)**. Lidman Decl., ¶ 14.

Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packet to opt-out or object to the Settlement, thereby providing ample time to review the Notice Packet without unduly delaying the Settlement. *See* Settlement, ¶ 10.C. Those Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Accurate Delivery included within the Settlement, for the period between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023. *See* Settlement, ¶ 3. However, the release will only be effective upon the date that Defendant fully funds the Gross Settlement Amount and any required employer-side taxes. Settlement, ¶ 3.G.

e. The Parties Engaged in Fair and Honest Negotiations.

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance

1 of a mediator. After the detailed review of the information, data and other documents and policies
2 produced by Accurate Delivery, Class Counsel drew on their extensive experience in similar cases to
3 assess the strengths and weaknesses of Plaintiffs' case. Lidman Decl., ¶ 11. This discovery allowed the
4 parties to assess the merits and value of Plaintiffs' claims and Accurate Delivery's defenses thereto, if a
5 settlement could not be reached. *Id.*

6 On March 7, 2023, the parties participated in mediation with Lynn Frank, a preeminent wage and
7 hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their
8 opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the
9 claims and defenses. Ultimately, the parties agreed in principle on a class-wide resolution. *Id. Id.* In
10 the weeks that followed, the parties finalized the terms of settlement and executed the Settlement.
11 Lidman Decl., ¶ 12, Exhibit 1.

12 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of
13 factual investigation and data analysis; the exchange of substantial information and class data, including
14 timekeeping and payroll records; wage and hour policies and practices; arm's length negotiations by
15 counsel; and mediation before an experienced wage and hour class action mediator. *See* Lidman Decl.,
16 ¶¶ 11-12; *see also Kullar, supra*, 168 Cal.App.4th at 130. Thus, these factors support preliminary
17 approval.

18 Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential
19 treatment to the class representative or segments of the class, and is within the range of possible approval,
20 as discussed in detail below. The Settlement will provide monetary relief to Settlement Class members.
21 The amounts proposed for Class Counsel' attorneys' fees and costs, and service award are all reasonable
22 and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies,
23 this factor supports preliminary approval.

24 **f. Amount Offered in Settlement Given Realistic Value of Claims**

25 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the
26 face of disputed claims. Plaintiffs' analysis of the maximum and realistic expected recoveries for each of
27 the theories of liability pled is set forth below:

28 Accurate Delivery Failed to Pay for Non-Productive Time: Plaintiffs allege that they and the other

1 Settlement Class Members were not fully compensated for all of their time worked. Lidman Decl., ¶ 16.
2 Specifically, Plaintiffs allege Accurate Delivery maintained a commission pay plan. *Id.* Moreover,
3 Plaintiffs allege that Accurate Delivery’s commission pay plan failed to separately compensate Plaintiffs
4 and the other non-exempt Delivery Drivers for time spent working on tasks which were not compensated
5 on a commissions basis (e.g., non-productive time). Specifically, Plaintiffs allege the tasks included,
6 without limitation, waiting around for customers, fueling the delivery vans, washing delivery vans,
7 completing paperwork, conducting pre- and post-shift inspections on the vans at the beginning and end
8 of shifts, loading and unloading the delivery vehicle and taking rest periods. Plaintiffs estimate that on
9 average they worked approximately 1 hour on non-productive time per shift, or 5 hour per week. As
10 such, Plaintiffs estimate Accurate Delivery’s exposure at approximately \$710,216 (10,918 workweeks
11 with commission only pay x 5 hours of NPT/week x \$13.01 average minimum wage⁴= \$710,216). *Id.*

12 Accurate Delivery contends that it compensated Settlement Class Members for all of their time
13 worked, including alleged “non-productive” time. Lidman Decl., ¶ 17. Accurate Delivery also contends
14 that any unpaid time was *de minimis* and therefore non-compensable. *Id.* Accurate Delivery further
15 asserts that Plaintiffs would be unable to certify this class given the individualized inquiries that would
16 be required to assess time spent on “non-productive” activities. Lidman Decl., ¶ 17. In light of these
17 defenses, Plaintiffs discounted the maximum exposure by 35% for the risk of non-certification, and an
18 additional 40% to account for Accurate Delivery’s defenses on the merits, to arrive at an estimated
19 exposure of approximately \$276,984.24. *Id.*

20 Accurate Delivery Failed to Authorize and Permit Paid Rest Periods: Plaintiffs allege that they and
21 Settlement Class Members were also not authorized and permitted to take all required rest periods due to
22 Accurate Delivery’s rest period policies and practices that fail to authorize and permit all rest periods for
23 every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 18. Specifically, Plaintiffs allege
24 that due to Accurate Delivery’s commission pay plan and the work demands imposed, Accurate Delivery
25 failed to authorize and permit paid rest periods on shifts over 3.5 hours. As such, Plaintiffs allege
26 Defendant fails to relinquish control in violation of California law and resulted in at least one rest period

27 _____
28 ⁴ Minimum wage in 2017 was \$10.50, in 2018 it was \$11.00, in 2019 it was \$12.00, in 2020 it was \$13.00,
in 2021 it was \$14.00, in 2022 it was \$15.00, and in 2023 it is \$15.50. Therefore, the average minimum
wage is \$13.01.

1 violation on every shift in excess of 3.5 hours. *Id.* Accordingly, Plaintiffs calculated Defendant's
2 maximum exposure for rest period violations at \$1,555,470 (14,814 workweeks x 5 violations per
3 workweek x \$21.00 (average rate of pay)). *Id.*

4 Accurate Delivery contends it has always maintained and enforced lawful rest period policies and
5 practices, and that Settlement Class Members were authorized and permitted to take all off-duty paid rest
6 periods in compliance with California law. Lidman Decl., ¶ 19. Further, Accurate Delivery contends that
7 Plaintiffs' rest period claim is inherently unsuited for class treatment as it requires an individualized
8 inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a
9 compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly,
10 Plaintiffs discounted the maximum exposure by 50% for the risk of non-certification, and an additional
11 45% to account for Accurate Delivery's defenses on the merits to arrive at an estimated exposure of
12 \$427,754.25. *Id.*

13 Accurate Delivery Unlawfully Rounded Time Worked: Plaintiffs allege that they and Settlement
14 Class Members were not fully compensated for all of their time worked. Lidman Decl., ¶ 20. Specifically,
15 Plaintiffs allege that Accurate Delivery would unlawfully shave their work time and/or round their work
16 time such that they would not be fully paid for all time worked when it started keeping track of their hours
17 worked in September 2021. *Id.* Plaintiffs also allege that this time shaving and/or rounding practice
18 utilized by Accurate Delivery was not-even handed over time and would almost exclusively round and
19 shave in Accurate Delivery's favor such that the employees were routinely underpaid for their time
20 worked and it appeared on average to be an underpayment of approximately 25 minutes per week. *Id.*
21 Accordingly, Plaintiffs calculated a total wage underpayment of approximately \$43,134 (3,947
22 workweeks x .42 per workweek x \$13.01 average minimum wage) + (\$21,567 liquidated damages under
23 Labor Code section 1194.2). *Id.*

24 Accurate Delivery contends that it compensated Settlement Class Members for all of their time
25 worked. Lidman Decl., ¶ 21. Accurate Delivery also contends that its rounding practices were lawful,
26 and any unpaid time for rounding was *de minimis* and therefore non-compensable. *Id.* Accurate Delivery
27 further asserts that Plaintiffs would be unable to certify a rounding class given the individualized inquiries
28 that would be required, and also that Accurate Delivery's rounding policy/mechanism was, according to

1 it, neutral on its face and in its application. *Id.* In light of these defenses, Plaintiffs discounted the
2 maximum exposure by 40% for the risk of non-certification, and an additional 30% to account for
3 Accurate Delivery’s defenses on the merits, to arrive at an estimated exposure of \$18,116.28. *Id.*

4 Accurate Delivery Failed to Provide All Legally Required Meal Periods: Plaintiffs allege that they
5 and Settlement Class Members were not provided all legally required meal periods due to Accurate
6 Delivery’s meal period policies and practices. Lidman Decl., ¶ 22. Specifically, up until September
7 2021 when Accurate Delivery changed its timekeeping practices and began tracking meal periods,
8 Accurate Delivery automatically deducted 30 minutes of work time for purported meal periods. Further,
9 once Accurate Delivery began tracking the start and stop times for meal periods, as a result of the work
10 demands imposed by Accurate Delivery, Plaintiffs allege that they were often provided with a meal period
11 late, short, and/or missed in violation of California law. Therefore, Plaintiffs calculated Accurate
12 Delivery’s maximum exposure the alleged meal period violations at approximately \$1,560,825 ((10,918
13 workweeks with auto-deduct x 5 shifts/week x \$21.00 average hourly rate) + (3,947 workweeks with
14 recorded meal periods x 5 shifts/week x \$21.00 average hourly rate)). *Id.*

15 Accurate Delivery counters that Plaintiffs’ exposure analysis on this claim is overreaching because
16 it has always provided non-exempt employees with an opportunity to take legally compliant meal periods.
17 Lidman Decl., ¶ 23. Accurate Delivery also contends that any non-compliant meal periods reflected in
18 employee timekeeping records during the time period for which employees recorded meal periods were
19 solely the result of employee choice, rather than any policy or practice of Accurate Delivery. Accurate
20 Delivery points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is
21 only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and
22 that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally,
23 Accurate Delivery contends Plaintiffs’ meal period claim is not suited for class certification, since
24 individual inquiries would be required to assess which employees took non-compliant meal periods, how
25 many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-
26 compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiffs
27 discounted the maximum exposure by 35% for the risk of non-certification, and an additional 35% to
28 account for Accurate Delivery’s defenses on the merits to arrive at an estimated exposure of \$659,448.56.

1 *Id.*

2 Accurate Delivery Failed to Reimburse Necessary Business Expenses: Plaintiffs allege that up
3 until September 2021 Accurate Delivery failed to reimburse them and Settlement Class members for
4 necessary business expenditures, including the use of their personal cellular phones for work activities, as
5 required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.* (2014) 228
6 Cal.App.4th 1137. Lidman Decl., ¶ 24. Plaintiffs contend that Accurate Delivery required them to use
7 their personal cellular phones to make and receive phone calls. *Id.* Plaintiffs estimate that, on average,
8 Settlement Class members incurred about \$30.00 in data usage expenses per month and there were
9 approximately 49 months during the relevant time period. *Id.* Accordingly, Plaintiffs calculate Accurate
10 Delivery's maximum exposure for this claim at approximately \$129,360 (49 months x \$30.00/month x
11 88). *Id.*

12 Accurate Delivery contends that it provided employees with tools to communicate and their use of
13 their personal cellular phones were not needed. Lidman Decl., ¶ 25. Further, Accurate Delivery argues
14 that any expenses incurred were minimal given the affordability of cellular usage plans. *Id.* Accurate
15 Delivery also argues that this claim is not suitable for class treatment because it would require
16 individualized determinations as to whether each employee used a personal cellular phone and how often.
17 *Id.* Accordingly, Plaintiffs discounted the maximum exposure by 40% for the risk of non-certification,
18 and an additional 45% to account for Accurate Delivery's defenses on the merits, to arrive at an estimated
19 exposure of \$42,688.80. *Id.*

20 Accurate Delivery Issued Inaccurate Itemized Wage Statements: Plaintiffs allege that as a result
21 of the above, Accurate Delivery issued inaccurate wage statements in violation of Labor Code § 226
22 because the wage statements. Lidman Decl., ¶ 26. There were approximately 2,940 wage statements
23 issued during the relevant time period. *Id.* Therefore, Plaintiffs calculated Accurate Delivery's maximum
24 exposure for wage statement violations at approximately \$291,900 (\$50.00 x 42 current employees + \$100
25 x 2,898 subsequent wage statements). *Id.*

26 Accurate Delivery contends that its alleged wage statement violations could not be shown to be
27 "knowing and intentional," and that Plaintiffs cannot show that they or any other employee "suffer[ed]
28 injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for

1 imposition of penalties. Lidman Decl., ¶ 27. As such, Plaintiffs discounted the calculated exposure by
2 55% for a risk of non-certification and an additional 40% for a risk of being unsuccessful on the merits, to
3 arrive at an estimated total of \$78,813.00. *Id.*

4 Accurate Delivery is Liable for Waiting Time Penalties: Plaintiffs alleges Accurate Delivery is also
5 liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all
6 wages upon separation. Lidman Decl., ¶ 28. Based on the data provided by Defendant, there were
7 approximately 46 Settlement Class Members who have separated their employment with Accurate
8 Delivery during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore,
9 Plaintiffs calculated Accurate Delivery's maximum exposure for waiting time penalties at approximately
10 \$231,840 (46 former employees x \$21.00/hour x 30 days x 8 hours/day). *Id.*

11 Accurate Delivery asserts it has strong defenses to the waiting time claim because there exist
12 good-faith disputes as to Plaintiffs' underlying claims, precluding imposition of penalties. Lidman Decl.,
13 ¶ 29. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude
14 imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that
15 "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties
16 over contested wages owed). Accordingly, Plaintiffs discounted the maximum exposure by 35% for the
17 risk of non-certification, and an additional 40% to account for Accurate Delivery's defenses on the merits,
18 to arrive at an estimated exposure of \$90,417.60. *Id.*

19 Accurate Delivery is Liable for PAGA Civil Penalties: Plaintiffs also seek civil penalties under the
20 PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 30. Plaintiff calculated
21 Accurate Delivery's maximum exposure at \$294,000 (2,940 pay periods x \$100 initial violation rate). *Id.*;
22 *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate
23 applies until employer is notified that it is violating a Labor Code provision).

24 Accurate Delivery argues that Plaintiffs' PAGA claim will fail for the same reasons that their
25 underlying claim will fail. Lidman Decl., ¶ 31; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136,
26 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
27 Accurate Delivery also maintains that, given its good faith defenses, this Court would exercise its
28 discretion to substantially reduce any PAGA penalties if it were to find Accurate Delivery liable for

1 Plaintiffs' claim, especially given the fact that Accurate Delivery changed its timekeeping and pay
2 practices in September 2021. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.*
3 (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*
4 (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA
5 penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiffs discounted the maximum exposure
6 figure by 30% for a risk of being unsuccessful on the merits, and an additional 35% to account for the
7 possibility of this Court reducing penalties, to arrive at an estimated exposure of \$133,770.00. *Id.*

8 **g. The Settlement Is Within the Range of Possible Approval**

9 Using these estimated figures for each of the claims described above, Plaintiffs predicted the
10 realistic total recovery for the Settlement Class would be approximately \$1,727,992.73. Lidman Decl., ¶
11 32. The proposed settlement of \$900,000.00 therefore represents approximately 52% of the reasonably
12 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
13 will provide tangible monetary relief to Settlement Class members, and will still provide an average
14 recovery to Settlement Class members of approximately **\$5,815.84** and an average individual PAGA
15 Employee settlement payment to be approximately **\$133.93**.

16 The settlement is reasonable especially in light of the significant litigation risks and will provide
17 tangible monetary compensation for disputed claims. Indeed, the percentage of the liability exposure
18 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*
19 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
20 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459
21 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop.*
22 *v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement
23 may be acceptable even though it amounts to only a fraction of the potential recovery that might be
24 available to the Settlement Class members at trial"). Thus, Plaintiffs submit that the proposed settlement
25 is within the range of possible approval, such that notice should be provided to the Settlement Class so
26 that they can consider the Settlement. The Court will have the opportunity to again assess the
27 reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

28 //

1 **h. The Experience and Views of Counsel**

2 “Parties represented by competent counsel are better positioned than courts to produce a
3 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
4 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
5 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
6 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
7 Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8; Nordrehaug Decl., ¶ 1-5. Class
8 Counsel conducted an in-depth review of Accurate Delivery’s timekeeping and payroll records and
9 policies, and drew on their extensive experience in similar cases to assess the strengths and weaknesses
10 of Plaintiffs’ case. *See* Lidman Decl., ¶¶ 10-30. The Settlement was also reached with the assistance of
11 an experienced and respected wage and hour class action mediator. *Id.* This factor strongly supports
12 preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

13 **i. Attorneys’ Fees and Costs**

14 California courts recognize an appropriate method for awarding attorneys’ fees in class actions is
15 to award a percentage of the “common fund” created as a result of a settlement. *See e.g., Laffitte v. Robert*
16 *Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding “the percentage of fund method survives in California
17 class action cases”). Class Counsel’s request for fees of one-third of the GSA is well within the range of
18 reasonableness, and indeed is considered the typical rate for common fund settlements. Historically,
19 courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the
20 case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

21 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
22 is currently estimated to be \$300,000.00, and up to \$30,000.00 in verified costs reimbursement. *See*
23 Settlement, ¶ 6; Lidman Decl., ¶ 33. Plaintiffs submit the requested fee is fair compensation for
24 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
25 *Id.* Further, Plaintiff has provided written approval of the split of attorneys’ fees in this action. Lidman
26 Decl., ¶ 34. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
27 analyzing Plaintiffs’ claims, conducting legal research, reviewing Accurate Delivery’s timekeeping and
28 payroll records and other documents and policies, preparing for and attending mediation, negotiating and

revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 33. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

j. Administration Costs

Phoenix Settlement Administrators ("PSA") fees and expenses are estimated not to exceed \$5,750.00. *See* Declaration of Jodey Lawrence in support of Plaintiffs' Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the proposed class size of approximately 88 Settlement Class members and the costs and expenses associated with administering the notices, setting up and maintaining a QSF for the duration of the payment plan schedule, and distributing the awards. Additionally, PSA will translate the Notice Packet and mail the Notice in both English and Spanish to Settlement Class members.

k. Class Representatives' Service Awards

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Here, as part of the Settlement, Plaintiffs will separately apply for a service awards at the time of seeking final approval of the proposed class action settlement in the amount of \$10,000.00 each for their services to the Settlement Class and a general release of all claims against Defendant. Lidman Decl., ¶ 35, Exh. 1 (Settlement, ¶ 7). As will be fully briefed at the time of final approval, Plaintiffs' requested service awards are intended to recognize the time and effort Plaintiffs expended on behalf of the

1 Settlement Class, including providing substantial factual information and documents to Class Counsel,
2 attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation,
3 as well as the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this
4 case, and the fact that Plaintiffs have each agreed to a general release of all claims and waiver of Civil
5 Code § 1542. *See* Lidman Decl., ¶ 35; Settlement ¶ 7, Marquez Decl., ¶ 7; Mikhael Decl., ¶ 7; Garcia
6 Decl., ¶ 7.

7 **l. PAGA Penalty**

8 The parties have agreed to a PAGA award of \$30,000.00 and in accordance with California Labor
9 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or
10 \$22,500.00. Settlement ¶ 4.f.5. This \$30,000.00 represents roughly 3% of the \$900,000.00 Gross
11 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.
12 *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx),
13 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or
14 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D.
15 Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
16 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class
17 action claims and PAGA claims under which no money was allocated to the PAGA claims).

18 **m. Taxes**

19 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
20 allocated as follows: twenty percent (20%) as wages; and eighty percent (80%) as penalties and interest.
21 The Settlement Administrator will be responsible for issuing to participating Settlement Class members
22 IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties
23 and interest. Each Settlement Class member who receives a Settlement Award will be responsible for
24 correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount.
25 Notwithstanding the treatment of the payments to each Settlement Class member above, none of the
26 payments called for by this Settlement Agreement, including the wage portion, are to be treated as
27 earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless
28 required by such plans. Settlement, ¶ 5.E.

//

1 **n. Uncashed Funds**

2 The Settlement provides that Settlement Class members with 180 days from the date the
3 Settlement Administrator mails the checks and any funds remaining after 180 days shall be transmitted
4 by the Settlement Administrator to the California State Controller’s Office under the unclaimed property
5 laws in the names and corresponding amounts associated with each Participating Class Member.
6 Settlement ¶ 5.F. As all settlement funds will be distributed to the Settlement Class members, there will
7 be no residue and it is unnecessary to designate *cy pres* recipients.

8 **C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

9 Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies.
10 The Settlement will provide monetary relief to Participating Settlement Class members. The amounts
11 proposed for Class Counsel’s attorneys’ fees and costs, and enhancement award are all reasonable and
12 appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
13 factor supports preliminary approval.

14 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE**
15 **TO SETTLEMENT CLASS MEMBERS**

16 Before the final approval hearing, the Court requires adequate notice of the settlement be given
17 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
18 Packet by first-class regular U.S. Mail, postage prepaid, using last known mailing address information
19 provided by Accurate Delivery. *See* Settlement, ¶ 10. This manner of giving notice is the “best notice
20 practicable” under the circumstances because it provides “individual notice to all members who can be
21 identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here,
22 Plaintiff proposes that the Settlement be administered by Phoenix Settlement Administrators (“PSA”), an
23 experienced class action settlement administrator to mail the Notice Packets in both English and Spanish.
24 *See generally* Lawrence Decl. and attached exhibits. Settlement Class members’ addresses will be
25 ascertainable through Accurate Delivery’s personnel and payroll records, which Accurate Delivery will
26 provide to PSA within 15 calendar days of preliminary approval of the Settlement. *See* Settlement ¶
27 10.A. Within ten (10) business days of receipt of the Settlement Class members’ addresses, PSA will run
28 the addresses through the United States Postal Service Notice of Change of Address database (which

1 provides updated addresses for any individual who has moved in the previous four years and has notified
2 the U.S. Postal Service of a forwarding address) and mail the notices to Settlement Class. *See* Settlement
3 ¶ 10.B. To the extent that any notices are returned, PSA will perform a “skip trace” to track any Class
4 Member’s current mailing address. *See* Settlement ¶ 10.F.

5 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it
6 advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties,
7 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
8 procedures by which to do so, explains the recovery formula and expected recovery amount for each
9 Settlement Class member, provides them the opportunity to contest their total pay periods included in the
10 notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out.
11 *See* Lidman Decl., Exh. 1 (Settlement, Exh. A). The proposed Notice Packet will also notify Settlement
12 Class members of the final approval hearing date and provides Settlement Class members the contact
13 information for Class Counsel, and advises Settlement Class members that they may enter an appearance
14 through counsel if they wish to. This manner of giving notice satisfies California Rule of Court 3.766(e)
15 as the most reliable and cost-effective method of reaching Settlement Class members.

16 **E. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

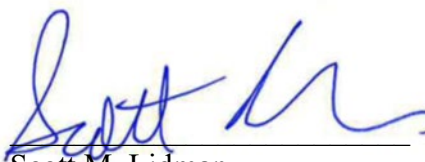
17 Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately
18 scheduled to follow the deadline by which Settlement Class members must file objections to the
19 Settlement or opt-out. *See* California Rule of Court 3.769.

20 **IV. CONCLUSION**

21 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the
22 proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order Granting
23 Preliminary Approval of Class Action Settlement submitted concurrently herewith.

24 Dated: April 27, 2023
Respectfully submitted,
LIDMAN LAW, APC

25
26
27 By:


Scott M. Lidman
Attorney for Plaintiff
JULIO GARCIA